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THE FRENCH ELECTIONS

Will Left Unity Prevail?

George Ross

Administrative Discharges THE 'LESS THAN HONORABLE' SOLUTION

John Grady

CALIFORNIA'S HIGH BENCH

A Most Remarkable Court

Joseph R. Grodin

***Gerald Chasin* / Christopher Jencks: 'Inequality'**

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LETTERS

what we deserve?

Portland, Ore.

DEAR SIRS: William L. Shirer's "The *Hubris* of a President" [*The Nation*, Jan. 22] finally specifies similarities between ourselves and the pre-World War II Germans. . . . We used to wonder where were the "good" Germans and now the rest of the world must wonder where are the "good" Americans. Perhaps it would be more just to stress the comparison between nations rather than between Nixon and Hitler, because we have evidence from LBJ that our leaders' behavior transcends one political party and one personality type.

This is worth consideration because rectification is rendered vastly more difficult if the problem is the nation rather than just one leader and his cohorts. Can we really expect to evolve to anything other than a military dictatorship eventually? . . . According to the Principle of Ecological Succession, the action of a community upon its habitat eventually results in an environment more suitable for a successor community. Such changes occur over many generations and are beyond the power of one man or one political party to manipulate. For example, although many have applauded the end of the draft calls for the armed services, consider the political change which will accompany the totally volunteer armed services. There will be much less internal military resistance to future Vietnams. Remember, too, that the abandonment of military conscription of Roman citizens in favor of a full-time volunteer professional army was one of the major forces which led to the change from republican to imperial government in Rome. There are many other forces in our present society which are leading toward increased controls of citizen behavior and centralized national administration for entirely admirable purposes (pollution control, welfare reforms, education support, voter registration, etc.). The question for you and Mr. Shirer and all of us is "Can we expect anything else from any leader?"

William E. Morton, Professor and Acting Head
Environmental Medicine Division
University of Oregon Medical School

Tucson, Ariz.

DEAR SIRS: William L. Shirer's article, comparing Hitler and Nixon, shows ignorance of widespread revulsion toward our actions in Vietnam on the part of "notable" American clergymen. This has been expressed before and during the recent saturation bombing. As the President can certainly testify, there is a long list of clerical dissidents. In Washington alone, Mr. Shirer evidently missed Dean Francis Sayre of the National Cathedral and the Rev. George Docherty of the New York Avenue Presbyterian Church (Lincoln's church). . . .

Ernest H. Tilford

doing something about it

Baltimore, Md.

DEAR SIRS: Your article, "Putting in the Weather Fix" by Jack Freed [Nov. 20, 1972] was much appreciated. Please convey our gratitude to the author. In recent weeks Tri-State Natural Weather Association has been receiving requests for TV appearances and for information across the country. This is gratifying, since our job is to inform the public. . . .

William L. Kinter, Secretary

correction

The first sentence of Robert Hatch's review of *Last Tango in Paris* was rendered meaningless by a printer's error. It should have read: "The trouble with Paul is that his toughness is only as thick as a scab." —*The Editors*

EDITORIALS

Arrogation of Power

Before any normally open-minded judge or jury, a competent lawyer would be confident of winning the case of the legislative branch versus the executive in the matter of the Senate's right to confirm the director and deputy director of the Office of Management and Budget. By a vote of 64 to 17, fourteen Republicans joining fifty Democrats, the Senate voted to require such confirmation. The House must now concur. If it does, the measure faces a Presidential veto, and its sponsors may lack the votes to override. But if that is the outcome, Mr. Nixon will have exacerbated his conflict with the Congress, and may have left an impression, not only with the Congress but also with the people, that he is recklessly bent on a monopoly of power.

A national budget system, named the Bureau of the Budget, was first set up in 1921, in Sen. Lee Metcalf's words, "to assist the President in formulating a unified budget to be submitted to the Congress." This assistance was provided by a couple of dozen employees. Now, after fifty-two years, the newly titled Office of Management and Budget employs nearly 700, and its director is often, and not incorrectly, referred to as the "assistant President." Financially, at least, this executive agency is in essence the Presidency, and that it should be solely the President's creature is a perversion of the clear intention of the Constitution in respect to the division of powers. It is to be hoped that the Congress has successfully challenged this "arrogation and aggregation of governmental power"; for if it has not, practically no limits will be set on what President Nixon, and his successors, may decide to do with federal revenues.

Senator Metcalf describes the vital functions of OMB as including the following:

¶It proposes a line-by-line budget limitation for each agency—not excepting regulatory agencies, which are supposed to be controlled by Congress.

¶It establishes guidelines on how legislation is to be enforced.

¶It settles interagency conflicts.

¶It sets priorities for the President, and recommends what funds are to be impounded.

¶It determines, along with the Civil Service Commission, federal pay adjustments between agencies.

¶It monitors hundreds of advisory commissions.

¶It issues regulations governing employee training.

¶It oversees management of national security programs and the shifting of funds.

All of these tasks, and many more, the OMB performs in secret.

In short, from its modest beginnings, the OMB has mushroomed into a super-department with life-and-death power over proposals for the expenditure of government funds. It has similar broad control over the management and evaluation of government programs, and the organization of the federal work force.

To exempt from Senate confirmation the director and deputy director of an agency so powerful would be to

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flout the principles of democratic government, as conceived by all of Mr. Nixon's predecessors. It would degrade the Congress to a body which could discuss anything but decide nothing. At this point the Congress must curb an unprecedented arrogation of power, or henceforth submit to whatever further attacks upon its prerogatives the President may see fit to launch.

The necessity for Senate confirmation of the director of OMB is not based on the qualifications of Mr. Nixon's current choice. Merely on the basis of his performance as a high official of Hughes Aircraft and Litton Industries, Roy Ash is unfit for the job, but if he were heaven-sent to fill the post, he should still be subject to confirmation. However, Mr. Ash's alarming record does add urgency to the matter. Rep. Les Aspin, who contributed a damning study of the Litton affair to *The Nation* of December 11, 1972, has now written "The Case Against Roy Ash"; it will appear next week.

Blackmun's Cake

In a recent decision, the United States Supreme Court ruled that an unemployed debt-ridden pauper, who is too poor to pay a $50 filing fee, is therefore too poor even to go bankrupt.

Robert Kras lost his job with the Metropolitan Life Insurance Company in May 1969. For two years he was unable to obtain any employment other than odd jobs which produced about $300 a year. By May of 1971, with more than $6,000 in debts, and assets consisting of $50 worth of clothing and essential household goods, and relying entirely on public assistance for the support of his family, he attempted to file for bankruptcy, obtain a discharge of his debts, and "make a new start in life." The papers he filed with the federal court in Brooklyn also stated that he lived in a two-and-a-half-room apartment with his wife, two young children (one an 8-month-old son then in the hospital with cystic fibrosis), his mother and her child.

But the bankruptcy law requires a $50 filing fee, and since Kras was unable to produce that sum, or to swear that he would be able to pay it in scheduled installments, the clerk refused to accept his petition. The welfare authorities denied him money for the filing fee, and Kras's Legal Aid attorneys applied to the court for permission to file the petition without it. Judge Anthony P. Travia ruled in Kras's favor, holding that under the constitutional doctrine of "equal protection of the law" an indigent could not be denied access to the bankruptcy courts because of inability to pay the filing fee. Not surprisingly, Judge Travia relied on a recent decision whereby the Supreme Court struck down a Connecticut statute that had required an average $60 fee as a precondition of filing for divorce.

The government appealed directly to the Supreme Court, and by a 5-to-4 vote, the Court reversed Judge Travia, and handed down a decision which reflects a cavalier indifference—or worse—to the legal problems of the poor. Mr. Justice Blackmun, author of the majority opinion, computed out the installment payments at less than $2 per week, and concluded that this sum—"less than the price of a movie and little more than the

IN THIS ISSUE

February 19, 1973

EDITORIALS

226

ARTICLES

230 The French Elections: Will Left Unity Prevail? *George Ross*

233 Administrative Discharges: The "Less Than Honorable" Solution *John Grady*

236 California's High Bench: A Most Remarkable Court *Joseph R. Grodin*

238 The Alternative Press: Journalism as a Way of Life *Daniel Ben-Horin*

BOOKS & THE ARTS

246 Jencks: Inequality *Gerald Chasin*

248 Gilbert: Designing the Industrial State *Richard W. Fox*

249 Trumbo: The Time of the Toad And Two Related Pamphlets *John Bright*

250 Music *David Hamilton*

251 Owl & Gull (poem) *William Pitt Root*

252 Theatre *Harold Clurman*

252 A Moon That Halved the Sky Awhile This Morning (poem) *Rochelle Ratner*

253 Art *Lawrence Alloway*

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cost of a pack or two of cigarettes"—should "be within his able-bodied reach."

The Connecticut divorce fee decision, which many constitutional lawyers would have thought a binding precedent —particularly since it was written by the impeccably conservative Mr. Justice Harlan—was "distinguished," with arguments that would seem incredible to anyone who has ever been poor, or represented a poor person. Justice Blackmun observed that, while a divorce is available only through a court, bankruptcy is not the only solution to a debtor's problems. He "may adjust his debts by negotiated agreement with his creditors," or he may manage to avoid his debts completely by eluding his creditors until the statute of limitations saves him. But the Constitution does not protect Kras, and thousands of others too poor to pay the fee, in their "private commercial relationship." As Justice Blackmun apparently sees it, Kras's plight is simply that of a commercial debtor, and the bankruptcy law, in its egalitarian splendor, requires the same filing fee for rich and poor. Moreover, the requirement is "rational," because the fees are used to provide a fund for the salaries and expenses of Referees in Bankruptcy. Thus, since Kras cannot afford to make his contribution to the Referee's $36,000 salary, he cannot gain access to the bankruptcy court.

Dissenting opinions were signed by Justices Douglas, Brennan, Stewart and Marshall, who have become an increasingly cohesive foursome as the Burger Court proceeds apace. Mr. Justice Stewart demonstrated how Kras's case is indistinguishable from that of the poor person in Connecticut who sought a divorce, because neither of them had any "effective alternative" to going to court. Since Kras has no assets he has nothing to offer his creditors, and there is no possibility of the "compromise settlement" urged by Justice Blackmun. "Unless the government provides him access to the bankruptcy court," Justice Stewart wrote, "Kras will remain in the totally hopeless situation he now finds himself."

Justice Thurgood Marshall's dissenting opinion bristles with near rage at the majority Justices' "disgraceful" attitude. More than 800,000 families in the nation, he pointed out, had 1970 incomes of less than $1,000, or $19.23 a week, and for them $50 is 5 per cent of their annual income. No doubt recalling the many poor clients whom he represented in the years when he was chief counsel of the NAACP, Justice Marshall admonished his colleagues that

> no one who has had close contact with poor people can fail to understand how close to the margin of survival many of them are. . . . A pack or two of cigarettes may be, for them, not a routine purchase but a luxury indulged in only rarely. The desperately poor almost never go to see a movie, which the majority seem to believe is an almost weekly activity. They have more important things to do with what little money they have —like attempting to provide some comforts for a gravely ill child, as Kras must do.

This "disgraceful" decision, to use Justice Marshall's language, will only encourage those in the Administration who are hostile to expanding, or even maintaining, legal services for the poor. The immediate problem could be remedied by an act of Congress excusing poor persons from all filing fees, in bankruptcy and other federal court proceedings. But the more pervasive problem which the millions of poor people in this country must face over the coming years, is how to survive with a Supreme Court that says, "Let them eat cake." MARVIN KARPATKIN

The Logic of Inversion

The shooting of Sen. John C. Stennis, as senseless as it was brutal, has provoked the usual murmurs of action against "Saturday Night Specials" and, in even more muted tones, against the promiscuous circulation of handguns in general. This happens after every assassination of a prominent American, or after any particularly heinous crime involving a revolver or pistol. Even the American Rifle Association now allows that maybe there should be better control of small arms.

But any licensing or registration of firearms is political poison, especially in rural areas. Senator Stennis himself voted against federal gun legislation. Attorney General Kleindienst would leave it to the states. President Nixon, in an inspired reply to a press conference question, declared that what we need is "a precise definition which will keep the guns out of the hands of the criminals and not one which will impinge on the rights of others. . . ."

If precedent is a guide, the furor, such as it is, will soon die down. Obviously something deep-seated, fundamental, is in play. The Nobel Laureate Albert Szent-Györgyi put his finger on it in a piece in *The New York Times* some two years ago. Little attention was paid to his diagnosis, which has general reference.

Professor Szent-Györgyi drew an analogy between the common atmospheric phenomenon of temperature inversion, which aggravates air pollution, and similar tendencies in social relations. "We were a life-oriented country," he wrote. "Then we turned around and went ten thousand miles away from home, to spend our treasures in a senseless and criminal war. . . . How did this inversion come about? Inverted things fit only inverted things . . . and if inversion starts at one point it tends to spread. . . . Once inversion is complete everything seems logical again. It is a self-contained logical system, only the direction is fatal."

A life-oriented logic would conclude that an event like the assault on Senator Stennis should lead to picking up as many handguns as possible, and to curtailing further manufacture and sale. But the inverted logic under which we live makes it *less* likely that tough anti-gun legislation will be passed and rigorously enforced. Every highly publicized shooting aggravates the fears which fuel the inversion. After the assassinations of 1968 the sale of guns jumped in all parts of the country. Instead of seeking a remedy, people buy guns with the fatuous idea of defending themselves. Yet the accounts of what happened to Senator Stennis leave no doubt that if he had been as heavily armed as the heroic town marshal of Dodge City it would not have helped him in the least. To defend himself against his assailants he would have had to alight from his car with drawn revolver, prepared to fire on anyone who approached him.

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There is a serious problem of crime in the streets. No one denies that, but we continue to concentrate on symptoms, not causes. Nor does anyone assert that stringent gun control is the total answer. It would help, and that only after a time lag, as in all such cases. But it would also tend to reverse the upside-down logic in which we are trapped.

All the usually proposed remedies are nostrums. The death penalty will not deter criminals as mindless as the two young blacks who shot Mr. Stennis. In a predominately racist, acquisitive society like ours, the lunatic fringe of the underdog population will not only rob but kill to satisfy the hatreds that society has bred in them.

Increased police protection will have only limited efficacy. The *National Observer* (February 10) notes that the Capital's metropolitan police department has been expanded 200 per cent in five years. The police patrol the well-lighted streets on scooters and motorcycles and in trucks and sedans; are guided by computers and helicopters. The law permits preventive detention. Following the Stennis shooting, one Congressman suggested doubling or tripling the 5,000-man police department, which would make it the second largest in the country, smaller only than New York City's. There would still be muggings and shootings. The odds that a policeman would be on hand when a crime is committed would still be almost as poor as they were when Senator Stennis got out of his car.

With various qualifications, Washington is a city of poor blacks and affluent or well-to-do whites. That is the principal division, despite minorities of prosperous blacks and poor whites. There is no gun control at all in the District. The chances are that the .22 with which Senator Stennis was shot was unlicensed, but under the existing laws it could have been legally possessed, if not by those who used it, then by others. There may now be a change in the laws, but that it will be of sufficient amplitude to reduce crime is unlikely. At the moment, we are unwilling to disarm, and the penalties will be visited on us as long as the perverse logic of inversion holds us in its grip.

'Undesirable'

Like so many other American institutions, the U.S. Navy in recent years has come under pressure to put its minority ratios in order. Accordingly, the Navy, which has not drafted men for the past twenty years, began an active enlistment campaign among minority groups, particularly blacks. And like other American institutions, it soon learned that improving ratios was only part of the battle. Bringing blacks aboard did not eradicate prejudice, and these new recruits, handicapped by adverse social conditions and especially lack of education, did not make the most promising sailors. Black militancy and Navy tradition were soon at loggerheads, and the resulting conflicts made headlines.

Thus far, the problem is one found generally in American society today, and by no means peculiar to the Navy. The solution, however, is something else. In the past several weeks, the Navy has begun to divest itself of its race "problem" by use of the administrative discharge (see p. 233 of this issue). Men who are found to be "a burden to the Navy" are being induced to accept "general discharges" which, say spokesmen for the service, imply no stigma. These papers, however, carry code numbers well understood by potential employers to signify that the Navy found their holders "undesirable." As many as 6,000 men may fall into the vague area of having proved to be a "burden." Having been coaxed into the Navy in order to make the "senior service" look responsive to the social pressures of the day, they are now being let out the back door because their superiors find them a nuisance. They are invited to sink or swim, with a "bad paper" discharge hung around their necks to make the exercise more challenging. The problem, we repeat, was not of the Navy's making; however the "solution" it has found is a perfect example of the bureaucratic military mind at work.

'Energy Crisis': Second Look

In our issue of June 26, 1972, Robert Sherrill took a rather hard look at the industry-orchestrated fright campaign about the "energy crisis," which a gullible press and media had been induced to accept at face value. Now some serious second thoughts about the nature of this "crisis" have begun to appear. Columnist Nicholas von Hoffman expresses a growing sense that "the energy crisis has an ersatz feeling to it," while another syndicated columnist, James Ridgeway, dismisses it as "phony in every respect." Even the *Oil & Gas Journal* (January 23) reports that "many oil executives" now feel the "crisis" was overplayed. S. David Freeman—in a speech to the Consumer Federation of America (January 25) that did not receive the attention it deserves—stated that "the energy crisis is a self-inflicted wound. It is not Mother Nature but Uncle Sam that is to blame." Mr. Freeman, it should be noted, is director of the Energy Policy Project which is sponsored by the Ford Foundation, and a former White House energy adviser.

A glance at this "second look" commentary discovers certain points:

(*1*) Once price controls took effect last year, the oil companies began refining gasoline, which was selling at seasonably high prices, instead of fuel oil. Massive publicity about the "energy crisis" then began to create panic buying on the part of consumers, which in turn gave further impetus to the ballyhoo. *The Washington Post* (February 4) reports that the industry poured $3 million into network television and mass circulation magazines to advertise the "energy crisis."

(*2*) Three years ago, the President's own Cabinet Task Force recommended that he scrap the Oil Import Quotas system, but the recommendation was ignored, as part of the Administration's "Drain America First" policy. (Japan, a highly industrialized nation, imports 90 per cent of its energy needs.) When the quotas were finally lifted, some states and communities were forced to lower pollution standards because major suppliers insisted they could not deliver low sulfur fuel. "With only days to go," Gov. Francis W. Sargent of Massachusetts told a Congressional

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committee recently, "they [Texaco] confronted us with a virtual ultimatum to waive pollution regulations or freeze."

(*3*) "As a result of the ever-mounting volume of 'energy crisis' stories, editorials and pronouncements," to quote Mr. Freeman, the basic interests of consumers received only "a passing nod." Currently, the industry is pressing the familiar argument that higher prices will enlarge the supply, particularly of natural gas. The fact is that there are no independent studies of gas reserves. Yet a major drive is under way to decontrol natural gas prices; if that happens, the price may well double, with no assurance that present supplies would be augmented, since windfall profits would not necessarily be used for gas exploration. Thus "the 'energy crisis,'" notes Mr. Freeman, "could well serve as a smoke screen for a massive exercise in picking the pocket of the American consumer to the tune of billions of dollars a year."

A 30 per cent increase in the interstate price of natural gas would hand over to major producers some $6.6 billion in annual gas billings which would pay nearly the full cost of both oil and gas exploration that the industry estimates will be needed to expand production through 1985. Also the effect would be to increase the estimated value of potential domestic reserves by $300 billion (*The Washington Post*, February 4).

(*4*) The "new look" also focuses on "the potential for energy conservation," as stressed in a study put out by the President's Office of Emergency Preparedness which got lost in the great furor about the "energy crisis." This study suggests that by 1980 the United States could save the equivalent of 7.3 million barrels of oil a day, employing such measures as: improved insulation of homes; adoption of more efficient air-conditioning systems; shifting intercity freight from highway to rail, "short-haul" passengers from air to ground travel, and urban passengers from autos to mass transit (it takes four times as much energy to get a person from home to work in an automobile as it does in a bus). Mr. Freeman estimates that the nation "can keep warm, get to work, and keep industry humming with about ⅓ less energy than is presently consumed."

(*5*) An efficient use is not being made of the available technology for increasing the supply of energy. In addition to nuclear fission and fusion, many clean energy sources are available. Here is Mr. Freeman's list: the commercial use of solar energy for direct heating and cooling of homes in many parts of the nation; a commercial shale oil industry producing upward of 1 million barrels per day; commercial gasification of coal to supplement natural gas; large-scale gas turbine-steam turbine combined cycles for electric power generation; a commercial fuel cell for total energy installations; commercial geothermal energy in significant quantities; a fluidized bed oiler to burn coal in a power plant without emitting the sulfur and other pollutants into the air. This list does not exhaust the options. But of these only one is being funded at more than $10 million annually—the coal gasification program gets $25 million a year from government and $10 million from industry. All the others are being funded to the tune of $1 million to $3 million.

What the "new look" at the energy crisis stresses is the need for a national energy policy with primary emphasis on the interests of consumers. "Consumers," Mr. Freeman insists, "need to enter the fight over a national energy policy. The stakes are enormous. Otherwise, the consumer could turn out to be the forgotten man in the energy crisis who ends up with high bills, shortages, and a polluted environment." Consumers should be alerted to take a long, careful look at the energy message which the Nixon Administration is supposed to release shortly. When it appears, the news media might ask some questions about it that they failed to ask last year when the great "energy crisis" ballyhoo got under way.

THE FRENCH ELECTIONS

WILL LEFT UNITY PREVAIL?

GEORGE ROSS
Mr. Ross is an assistant professor of sociology at Brandeis University and a research fellow in the area of West European studies at Harvard.

A new Chile in the heart of Europe? As France approaches its legislative elections on March 4 and 11, the possibility cannot be ruled out. In June 1972 the French Communist and Socialist Parties agreed on a common program of reforms to be enacted if the Left wins the elections. Since then these two parties, joined by left-wing radicals, have been conducting a unified and effective campaign for the electoral victory of their Union Populaire. The latest opinion surveys show the Union leading the ruling Gaullists by 46 per cent to 38 per cent (with most other preferences going to unaffiliated Centrist candidates). While the polls do not yet indicate a clear Left majority, the Gaullist regime is in serious trouble. Deprived of the presence of the General, suffering the erosive effects of having been in power too long, rocked by a series of scandals which have challenged the integrity of high officials (beginning with an ex-Prime Minister's reluctance to pay taxes and continuing through allegations of corruption between Ministers and real estate interests), the Gaullists are in a weak position to contest an election with a united Left.

How could the French Left, historically given to virulent internal disagreement, agree on a common program for change? There are many answers, of course, but none is more important than the consolidation of Gaullism into a coherent majority of the Right in the years after 1958. With the Gaullists securely in power, the non-Communist Left and Center could not hope to present a credible political threat without political collaboration with the

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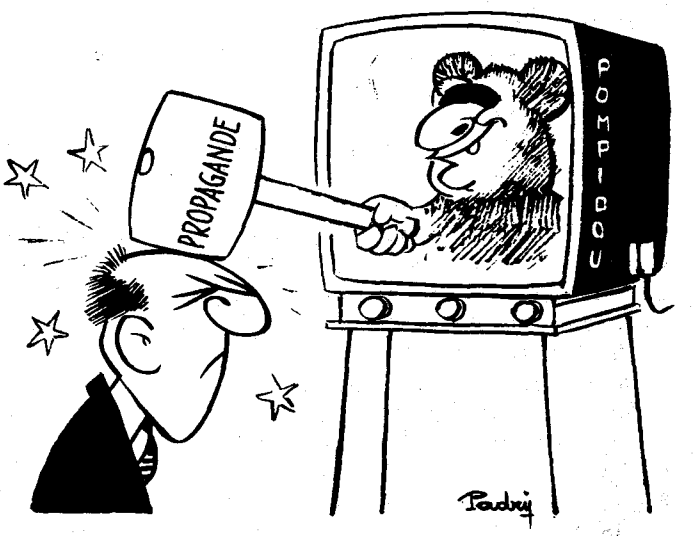
Communists, who constituted the most powerful single opposition group. Anti-communism had long been the main barrier to Left unity in France, and Gaullist political reality provided powerful incentives to toning it down. This reality was not immediately perceived, and many non-Communist minds clung to the desirability of finding some "third way" between Gaullism and an alliance with the Communists. Nonetheless, the move toward such collaboration began early in the 1960s, just after the Algerian War, and came to a successful conclusion (although only after many tortuous steps) in the June 1972 Union Populaire program.

The second major reason why a Union Populaire has now become possible is political leadership, especially that of the French Communists. The theme of unity on the Left has been constant in the history of French communism, since unity has usually been the only evident road out of isolation for the French party. The issue was pursued with particular vigor and persistence by the PCF (Parti Communiste Français) beginning in the early 1960s. Time and again, the PCF took unity initiatives with a moderation and singleness of purpose that obliged the rest of the Left to pay attention. To this end, the Communists publicly elaborated new positions on a "French road to socialism" which took them far from their Bolshevik roots. The "French road" was to be peaceful, respect parliamentary niceties, preserve and expand civil liberties and foster several competing political parties. Over time, the reasonable talk and conduct of the Communists overcame some, if not all, of the cold-war suspicion which had isolated them for so long.

In François Mitterrand, an old-line worldly French leftist, the Communists found an astute *compagnon de route* on their journey to coalition. Mitterrand, an ambitious politician, understood that the non-Communist Left could not come to power unless Communists and Social Democrats could build a working relationship. Mitterrand's own Presidential candidacy against de Gaulle in 1965 was the first major trial of this understanding. Its success (Mitterrand came close to defeating de Gaulle) both launched Mitterrand as the prime candidate for leadership of the non-Communist Left and generated the notion that collaboration with the Communists did not lead to disaster. After long and complicated infighting, Mitterrand emerged in 1971 on top of a regrouped and renamed French Socialist Party. From that point on the strategy of collaborating with the Communists was agreed upon. The approaching 1972-73 electoral campaign made program negotiations with the Communists logical; hence the June 1972 accord on a "Common Program for Government." The importance of the Union Populaire accord cannot be overstressed. Only twice in modern history have French Communists and Socialists reached such extensive agreement—in the Popular Front period of the 1930s and in 1972.

The "Common Program for Government" is a strong, if reformist, blueprint for major attack on the capitalist heartland of French economy and society. Its key section, entitled "Democratizing the Economy," proposes the outright nationalization of banks, the aerospace industry, the pharmaceutical industry, industries centered around nuclear power, the entire armaments sector and all underground mineral resources. In addition, the program advocates nationalizing "the largest part" of the electronics industry (computers especially) and the chemical industry. The program further proposes that the state acquire shareholdings (which can become as large as a majority) in iron and steel, oil and private air and marine transport. Finally under this title are a series of structural reforms for the operation of French industry in general,



Le Herisson (Paris)

which include democratized regional and general economic planning procedures, legally enforceable public accounting for corporations, higher levels of corporate taxation, much greater security and power for labor unions within firms and some important new openings for worker and union control over management decisions.

Under the headings, "To Live Better" and "To Change Our Lives," the program offers a series of important social reforms. Along trade unionist lines, it promises a $200-a-month minimum wage, a reduction of job categories and greater provision for the re-education of workers to facilitate changing jobs and skill levels. Promising many more "social goods," the program foresees an acceleration in the construction of new, especially low-income, housing (together with a frontal attack on real estate speculation), the provision of a national network of day-care centers, fundamental educational changes, a reorganization and expansion of hospital care, truly comprehensive health insurance and major changes in the laws governing the use of agricultural land. Finally, there are a series of measures on behalf of French women, including radical changes in the laws governing divorces, abortion and the availability of birth control devices and information.

After proposing a series of reforms of French political institutions (modifications of and limitations on the powers of the President, to return France to legislative rule; new guarantees of civil liberties; the establishment of a Supreme Court) the program proceeds to questions of foreign policy. Here the resolution of differences was most difficult, given the Communist attachment to the Soviet bloc and the Socialist sympathy for pro-American and pro-European solutions. And here the moderation of the

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Communists emerges most clearly. The program promises that any future Union Populaire government would, for the period of its duration, renounce the pursuit of French nuclear warfare capability. However, nothing is said about destroying the existing stockpile of nuclear weapons. The Union Populaire would be opposed to big-power blocs of any sort, in particular NATO and the Warsaw Pact, but the program refuses to propose that France withdraw officially and totally from NATO. Finally, on the question of the European Common Market (which the Communists have long viewed as little more than a capitalist plot to isolate the Socialist bloc) the program promises that a Left government would participate in the Market with the aim of "democratizing" it—the nature of such "democratization" is left vague.

The Union Populaire program is, then, a radical one: its implementation would lead to profound change in France. The program must be seen in another light as well. The Communists have always desired to cement any coalition with the Socialists by a specific "contract" for change to which the Socialists might be held in the event of any trouble or future disputes if the Socialist right wing came down with cold feet. Moreover, the Communists have also seen such a "contract" as one way to notify reluctant coalition allies in advance what the exact objectives of Communists would be in any Left government, in order to assuage fears of *coups d'état* and similar underhanded tactics. The Union Populaire program specifically deals with delicate issues of political procedure. The coalition engages itself to return peacefully to opposition should it lose a legislative election after being in power. And, in a major concession by the Communists, the coalition pledges to allow the President of the Republic to appoint a new government, rather than dissolve the assembly for new elections, if the Left coalition falls apart or loses its majority.

In March, for the first time since the 1930s, the French voter will face a choice between two clear alternatives, the Left and the Gaullists. The effects of this political simplification have been felt strongly in the center of the political spectrum. Politicians who had once put their money on building a Left-Center coalition which would exclude the Communists—men such as Jean-Jacques Servan-Schreiber and Jean Lecanuet—have found their political bases shrinking. As the Socialist-Communist coalition became more and more credible, the Left of the French Center began to move toward the Union Populaire. Those who remained in the Center—those who found collaboration with the Communists abhorrent—have been forced to choose between impotence and eventual collaboration with the Gaullists. In certain circumstances—if both the Left and the Gaullists fail to win a majority—Centrists might well hold key votes in a new parliament. Servan-Schreiber and Lecanuet have already laid out the conditions under which they would support a Gaullist majority.

Such a clear posing of political alternatives between the defense of capitalism and a shift toward socalism is unique in French political life. Despite the Left's massive losses in the 1968 elections (colored by events of May-June 1968) the Gaullists have long seemed politically stronger than they actually are. The social and political malaise which led to the 1968 crisis is still there, not far below the surface, and it may play an important last-minute role in deciding votes. Inflation, the one social factor which, everywhere in the West, seems most important in promoting the chances of political oppositions, may also be working in the Left's favor. The scandals and an inability to communicate well with the public have undermined the credibility of many Gaullist leaders. The degree to which the men now in power are in political trouble can be gauged by the public jockeying for succession within the Gaullist bloc itself. Gaullism was for a very long time a coalition of right-wing and Centrist politicians riding the coattails of a great man. The great man is no longer present, and it has become apparent that his successors are men of a much smaller stature. What's more, they have been making a political mess of things.

In contrast to this disarray in the Gaullist camp, the unity of the Left has held firm. Its spokesmen have come through powerfully—François Mitterrand in particular has emerged as a genuine statesman. Even Georges Marchais, the PCF General Secretary who in the past has seemed a gruff and gray figure, has done his part, most recently by calling his party no longer the "party of the clenched fist but of the extended hand." No open flaws have emerged in Communist-Socialist collaboration, and leaders of both camps have handled divisive issues (usually anti-Communist attacks) with grace and reasonableness. Behind the performances of leaders there has been massive support. Unity—because it has eliminated internal squabbling and concentrated the push against Gaullism—has in itself been a powerful multiplier of leftist strength. In addition, the Union Populaire has been able to count on the invaluable support of the bulk of organized labor through the Communist-controlled CGT (Confédération Générale du Travail) and, to a lesser extent, the CGT's trade union ally, the CFDT (Confédération Française et Démocratique du Travail).

The Gaullist leadership has not been without resources to prevent its own demise. The Union Populaire program offers a mortal challenge to key French economic interests, and the Gaullist campaign has enjoyed ready financial support. Nevertheless, the Gaullist campaign has been remarkably disorderly. The central issue which the Gaullists have attempted to use has been anti-communism. The themes have been stated and restated *ad nauseam*: the French Communist Party is tied to Moscow and Stalinism; a Socialist society means the repressiveness and unpleasantness of the popular democracies; the Socialist allies of the PCF have been duped into selling France down a Muscovite river. What has been most interesting about the Gaullist campaign thus far has been the failure of these themes, and all manner of similar "red scare" tactics, to elicit a responsive shiver. A great deal of history has gone by since the death of Joseph Stalin. Apparently, rampant anti-communism no longer works to isolate and discredit the French Communist Party.

With the flop of its central tactical hope, the Gaullist majority has been reduced to promising its own flock of reforms, if only the electorate will return it to power. It is not yet clear whether voters will trust this mood of

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contrition since the Gaullists have waited fourteen years—and until confronted by a real threat from the Left—to discover such reformist leanings. Beyond promises, the Gaullists have stressed the high cost and unrealistic nature of the Union Populaire program—charges which the Left has answered quite well. One potentially important issue that has come up from time to time involves the prerogatives of President Georges Pompidou. According to the Constitution, the Prime Minister is appointed by the President, not by the National Assembly. The President is thus constitutionally free to refuse to appoint a Prime Minister of the Left, even if the Union Populaire wins a majority in March. If President Pompidou were to appoint a Gaullist Prime Minister in the face of adverse election results, and were this Prime Minister then defeated in parliament, the President could legally call new elections. The threat that Pompidou might proceed in this way has been raised several times recently, perhaps as a way to warn the electorate that they might face a constitutional crisis if they were foolish enough to elect the Left. The risks in such a tactic are large, however. Threatening to thwart the democratically expressed wishes of the electorate may be a dangerous move with people as jealous as the French are of their political rights.

The campaign will undoubtedly hold its suspense down to the wire. Only on the evening of March 11 will it be known whether or not the French have chosen to begin the "French road to socialism." If they do so choose, the situation which will follow promises to be complex and stimulating. Given the chance, the Union Populaire can be counted on to carry out much of its program. Privileged and powerful interests, in France and elsewhere, would unquestionably conspire to oppose this initiative in every possible way. □

ADMINISTRATIVE DISCHARGES

The 'Less Than Honorable' Solution

JOHN GRADY
Mr. Grady is an Air Force veteran now teaching at a Commonwealth campus of Penn State.

In every war, some soldiers are killed; others maimed. Among the heaviest losers from the war in Vietnam have been the men and women who returned home with less than honorable discharges. They, like Mark Essex lying dead on a rooftop in New Orleans, or the men called "De Mau Mau" who await trial on multiple murder charges in Chicago, were branded by their DD 214s, the discharge form.

Mark Essex carried one of the better less than honorable or "bad paper" discharges. He had been given a general discharge from the Navy in February 1971. His discharge did not come from a court-martial, though he had been tried and convicted of an unauthorized leave the month before; it came from an administrative action quite distinct from the military system of justice.

Today's Army, Navy, Marine Corps and Air Force have changed their ways of handling men and women who do not or cannot conform. In addition to the relatively slow court-martial, where the conviction rate is about 95 per cent, the services have issued a series of personnel regulations under a general guideline from the Defense Department that quickly and easily gets rid of those thought unsuitable.

Most civilians, even veterans of earlier American wars, do not understand the military's newer discharge procedures and what these bad papers mean in terms of employment. There are five types of discharge: honorable, general, undesirable, bad conduct and dishonorable. Courts-martial may issue three of these: honorable, bad conduct or dishonorable; administrative actions also give three types: honorable, general or undesirable. Civilians do not make fine distinctions between types and procedures. But the questioning of military justice grows steadily more insistent in press and government, and the distinctions between types of discharges and procedures used in administrative actions and in courts-martial are precisely what need to be examined if a thorough reform of military justice is to be undertaken.

To show the widespread use of administrative discharge boards during this war, it is necessary to go back a few years in military personnel records. For example, in fiscal year 1970, the Defense Department reported some 70,000 courts-martial and approximately 30,000 discharge boards.

Obviously, not every court-martial led to discharge, and the same can be said of the discharge boards, since they, too, have the right to retain. In fiscal year 1970, 22,537 men and women received undesirable discharges, about 4,000 received bad conduct discharges and another 383 received dishonorables. The undesirable category accounted for almost 2 per cent of all discharges during that time.

As the war cooled during the next fiscal year, the activity of the boards increased. Almost 30,000 undesirables were passed out; they accounted for approximately 3 per cent of all discharges. A Defense Department spokesman in Washington said he had no statistics on general discharges, the kind received by Mark Essex, since these cases are seldom appealed.

Among the services, the Marine Corps has relied most heavily on the administrative procedure and the Air Force has used it least. General discharges are not included in the figures, but almost 7 per cent of all discharges from the Corps were undesirable in fiscal year 1971, while in the Air Force, undesirables accounted for less than half of 1 per cent of total discharges.

In all services, men and women brought before a discharge board are characterized as either "unsuitable" or

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"unfit." They may have "character disorders," like Mark Essex, a term the military psychiatrists tend not to define, or simply "could not adapt to military life," another phrase that lacks precise meaning. Some of the categories of persons brought before discharge boards are AWOLs, homosexuals, alcoholics, drug users, habitual bed-wetters, slow learners, those who have had several contacts with the police, pregnant unmarried enlisted women, chronic V.D. cases, those who have defaulted on bills, etc.

Like the defendant at a court-martial, a person appearing before an Army or Air Force discharge board has a list of charges read to him. The Navy reads charges only to those who may receive an undesirable. Thus Mark Essex, like thousands of other sailors who did not have eight years of continuous service, may never have actually known why he received a general discharge. Black sailors aboard the *U.S.S. Constellation* wanted to talk to their commander about this easy paper shuffling, but he refused to discuss the problem with them.

In the Army, the person to be discharged is to have counsel, a chance for consideration of his case by a board of officers, including statements in his behalf and a personal appearance; but the person may waive any of his rights, including counsel and a chance for later appeal, and merely be "processed" out of the service. The fifth paragraph of a prepared form warns, "as a result of issuance of a discharge under conditions other than honorable, I may be ineligible for many or all benefits as a veteran under both Federal and State laws, and . . . I may expect to encounter substantial prejudice in civilian life."

Even a person awaiting court-martial may still cop the administrative discharge, as did one of the Presidio mutineers in 1969; but when that is done, the discharge is almost always undesirable. But in all administrative actions, those before a board or processed through the personnel office, the person, even if he waives all his rights, does avoid a "federal conviction," i.e., a sentence and discharge handed down by a court-martial. Through administrative procedures, the person may be retained or given one of the three types of discharge; he or she may not be jailed, fined or sentenced to punishment.

When there is a board hearing with personal appearance and testimony in behalf of the person to be discharged, administrative procedures still differ from courts-martial. Capt. Jack F. Lane, in the Winter 1972 issue of the *Military Law Review*, equated the procedure at these hearings with matters brought before federal regulatory agencies, like the Federal Trade Commission, where the normal rules of evidence (is it relevant, material and probative) generally do not apply. The board of officers, like FTC examiners and commission members, are presumed to have the expertise necessary to delve into the limited subject matter at issue.

Unlike FTC commissioners and examiners, however, officers do not work full-time on the discharge board; they are performing an extra duty, having been selected by their commander, as are their peers who serve on courts-martial juries.

Since the discharge board is not considered part of the military justice system, Article 31, the Uniform Code of Military Justice's Fifth Amendment, is not necessarily extended. The board also has the latitude to consider the previous military and/or civilian arrest records, and in general the board's discretionary power to admit statements and witnesses is greater than that of a judge at a court-martial.

The person appearing before a discharge board also suffers some of the disadvantages of a defendant at a court-martial. In both types of procedure, the defense, in order to have witnesses to testify, must pretty well detail its position before the case begins; in both a court-martial and a discharge hearing witnesses may not be compelled to testify if they have left the service.

After the board makes its decision, but before the person is discharged, the case must be reviewed at various levels of the chain of command. The commander has the right to amend a board's decision, raising or lowering the category of discharge, or keeping the person in uniform.

After discharge, there are appeal rights; however, the burden is on the discharged individual to make his case either in person, possibly with counsel and witnesses, or in writing to an appeals board in Washington. Regulations say an appeal may be made after six months from the date of discharge. In practice, especially in the Army and Marine Corps, it usually takes from eighteen months to two years from discharge for a first hearing on an appeal. Even in the relatively fast Air Force and Navy, the rate of success in appealing discharges is abysmally low. Since World War II, about 14 per cent of all less than honorables have been upgraded; most of these on technicalities in procedure.

Because most discharges are not upgraded, the military, probably to quiet Congressional complaints, has provided a very small avenue of relief for those branded with less than honorables. After three years or so, if the person so stigmatized has not been involved with the civilian police and has filed another statement with supporting documents to his changed character, a military form is sent that may be shown to potential employers saying that this person is now trying to live a clean life. This relief applies to men and women who have received their bad papers through either court-martial or administrative action.

In terms of service-connected benefits, the person who takes the board action over the court-martial may have a slight advantage. In addition to avoiding a "federal conviction," the recipient of a general discharge is eligible for all veterans' benefits and services. Personnel receiving an undesirable discharge must have the case evaluated by the Veterans Administration to determine if any or all of his or her benefits are to be denied; meanwhile, the Department of Labor examines the case to determine if he or she may receive job counseling, employment placement and unemployment compensation. Those with bad conduct, undesirable and dishonorable discharges lose payment for accrued leave, cost of transporting their family and personal goods back home and re-employment rights.

For more than a decade, Sen. Sam Ervin, the tough-minded individualist from North Carolina, has investigated the problems inherent in the administrative dis-

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charge procedure. In 1962, when he began looking into the matter, there was no requirement that a counsel be appointed, records of hearings were not kept, government investigators could not be cross-examined and much of the investigation might be stamped classified. In short, the person being discharged often did not know who was accusing him or what were the charges.

The Pentagon consistently testified that any change in these procedures would lead to an automatic breakdown in discipline throughout the ranks. Nevertheless, there have been some changes, such as the keeping of records and the offer of counsel. Ervin and some others in Congress are still not satisfied; legislation is expected to be offered to the 93rd Congress, as it was to the 92nd (where it died in committee) in the hope that some measure of due process may be introduced into these administrative actions.

In recent years, Senator Ervin has been joined by the Black Congressional Caucus, Reps. Mario Biaggi, Roman Pucinski and a few others, social workers, state employment counselors, black veterans' groups like The Concerned Veterans from Vietnam and the chief judge of the Court of Military Appeals.

They point out that the men and women receiving administrative discharges are usually very young (late teens or early 20s) with less than a year of active duty to their credit. Despite the celebrated dissent cases in the military or the popularized drug cases, most persons receiving less than honorables either through a court-martial or administrative action are being punished for being AWOL. That is a broad term; it covers not only skipping post for a prolonged time but also repeated tardiness for duty or days spent in a civilian jail awaiting trial.

Two groups in the military seemed to have been particularly vulnerable to the administrative discharge: the first was taken into uniform under "Project 100,000," the lowered admission standards that were to give young men a chance to learn a skill, further their education once they got out; meanwhile, they would be fighting the war on poverty by getting off the streets and defending their country in an Asian war. The second group was made up of those whom civilian judges offered the choice of jail or the military. Project 100,000 died with the Johnson administration's war on poverty, and the Army, in particular, has tried to stop the practice of judicial shanghai by urging state legal officers and judges to cease sentencing men to the Army.

A high percentage of the men in Project 100,000 or sentenced to the military are black. The Defense Department estimated black strength at about 12 per cent in all services during the war in Vietnam; the Navy, with a history of racism, had the lowest black proportion in the ranks: about 6 per cent.

When the reality of the military situation began to collide with rising black consciousness, sparks flew. Blacks are estimated to have received anywhere from 25 per cent (official claim) to more than half of all the less than honorable discharges given out by courts-martial or administrative action.

Some black veterans wrote: "The biggest single problem monster for the black veteran is the growing frequency with which he has returned to his family with other than honorable or 'bad paper' discharges. This recent problem is all the more alarming in that circumstances typically surrounding such penalties are not usually unrelated to the new black self-awareness."

The military's problem ends when the person is discharged; that is where the larger society's problem begins. Veteran unemployment plagued the Bureau of Labor Statistics until just before the election when, according to the Nixon Administration, it dramatically fell. However, the problem has remained for young black veterans, with the unemployment figure staying close to 25 per cent. And young blacks, particularly those in their early 20s with a less than honorable, often do not appear in the unemployment statistics, since they may not be counseled by the state and remain hidden from the report makers.

Most state employment offices are so besieged by veterans looking for work that they allow the less than honorable discharge recipient to sit alone, frustrated and growing more and more bitter each day. Only Illinois has made any attempt to reach these men and women. Former Gov. Richard Ogilvie hired some persons with less than honorables to work specifically on this problem in the local employment offices. They not only search out prospective clients, counsel them, and try to place them in jobs other than sweeping floors at the South Chicago works of U.S. Steel but they try to educate employers as to how these discharges were given out. The Illinois project has met with limited success. With more than 8 million veterans to choose from and a relatively tight job market, most employers simply do not want to take the chance on a person with a less than honorable discharge, especially when that person is black. Most other states give the usual disclaimer: we have no money for such a project.

As early as 1966, before the job market went through the Nixon recession, 53 per cent of the firms surveyed by Southern Illinois University said that they would not consider hiring a person with a less than honorable discharge. In the more lucrative jobs, such as insurance, finance, real estate and personnel services, the figure was higher: persons from these firms said job applicants presenting them with a less than honorable discharge were of "questionable moral character." A New York federal district court found that the person holding the administrative discharge may be less employable than the one holding a bad conduct discharge.

Could the men and women do something with their lives without the double brand of race and a less than honorable discharge? No one knows: Illinois' experiment was unique but not encouraging. To ease some of the problem, particularly after the Black Congressional Caucus turned its attention to administrative discharges, the Army has begun to review old discharges.

Secretary Robert Froehlke overturned the "without honor" discharges given by Executive Order of President Theodore Roosevelt to 167 black soldiers allegedly involved in the "Brownsville Raid" of 1906; but the Army did not follow up this change by checking to ascertain whether any of the men were still alive (and at least one is, according to recent newspaper stories) and give them or their families whatever benefits may be

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coming to them. No bill has been offered in Congress to upgrade all past bad papers; Senator Ervin has limited his inquiry into the legalistic arguments of due process rather than the broader problems of what action Congress should take for those already back home with less than honorables.

Sixty-four years is a long time to wait for any action to correct bureaucratic injustices that reek of racism. Mark Essex was not going to wait; he took matters into his own hands and died of machine-gun fire from a Marine Corps helicopter on a rooftop in New Orleans, hating whites for what the Navy did to him. □

CALIFORNIA'S HIGH BENCH

A MOST REMARKABLE COURT

JOSEPH R. GRODIN
Mr. Grodin, a member of the California bar, is a professor of law at Hastings College of the Law, University of California. He is the author of Union Government and the Law: British and American Experiences Compared *(UCLA Institute of Industrial Relations).*

San Francisco

When Justice Raymond Peters of the California Supreme Court died in early January, Gov. Ronald Reagan moved quickly to nominate his former cabinet secretary, William P. Clark, Jr., to fill the vacancy. The Governor thereby touched off a controversy that is still raging. Four and one half years ago Reagan appointed Clark as trial judge in San Luis Obispo County Superior Court; two years later he elevated the judge to the intermediate Court of Appeal. Neither appointment attracted much if any attention. California's Commission on Judicial Appointments, composed of the Chief Justice of the Supreme Court, the Attorney General and the senior Justice of the Court of Appeal, is empowered to veto gubernatorial nominations to appellate judgeships; its approval of Clark was routine.

However, Supreme Court appointments are considerably more visible and significant, and the most recent nomination provoked inquiry which has revealed a number of disturbing facts. While the Governor's office initially stated that Clark was a graduate of Stanford University and Loyola University Law School, it appears that in fact Clark was not graduated from either institution, having dropped out of the former and flunked out of the latter. Clark was permitted to take the bar examination notwithstanding his lack of a law degree (presumably on the basis that he had enough course credit), but he failed the first time around, gaining admission only after re-examination. These facts naturally raised questions as to the desirability of the appointment, if not of Clark's fitness to serve as judge of the high court.

Reagan has defended the nomination by appealing to the "democratic" principle that requirements of formal education should not bar advancement where the individual has gained experience and proved his qualifications in the school of hard knocks; but that argument has raised further questions, so far not completely answered. There is, it has been suggested, a difference between not completing law school and failing to meet the minimal academic standards of the institution—particularly when the institution is a night law school whose standards are not remarkably high. Reagan's answer is that Clark was required by economic circumstance to work his way through school, and was unable to devote the time necessary to his studies. The factual accuracy of that contention has been questioned, but, beyond that, it has been asked whether Clark's practice as a lawyer and his performance as a judge have demonstrated the sort of experience and ability that should qualify him as a member of the highest court in the state, notwithstanding an undistinguished academic career. Faculty and alumni organizations from various of the state's leading law schools have issued statements questioning the propriety of the appointment.

The existence of these questions, and the controversy they have provoked, have led Chief Justice Donald Wright, as chairman of the Commission on Judicial Appointments, to an unusual procedure. Justice Wright, who is himself a Reagan appointee, has asked the State Bar of California "to assemble relevant factual material pertaining to the qualifications" of Clark, and to report their findings, without recommendation, to the commission for its evaluation. The State Bar's findings are expected by the end of this month, and Wright has scheduled a public hearing on March 2 for the commission to hear further testimony. Reagan has publicly criticized Wright for bringing the State Bar into the picture and for deferring action on Clark, claiming that Wright's actions are inconsistent with the commission's responsibility and with its earlier approval of Clark's appointment to the Court of Appeal.

The significance of the Clark controversy can be understood only in relation to the truly remarkable character of California's Supreme Court and the role it has played in the state's political climate. A sampling of its opinions helps to give the picture. The California court ruled against the use in criminal trials of illegally obtained evidence long before the U.S. Supreme Court imposed that limitation as a constitutional requirement. It established the duty to advise arrested persons of their right to counsel more than a year before the famous *Miranda* decision. In the area of school integration, it has gone beyond the High Court's opinions, requiring affirmative action to end *de facto* segregation. Last year, when the U.S. Supreme Court held Georgia's death penalty unconstitutional, Justice Blackmun complained in his dissenting opinion that the majority had allowed itself to be "propelled" toward that result by the landmark decision of

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the California court in *People* v. *Anderson*, which holds the death penalty violative of that state's constitution.

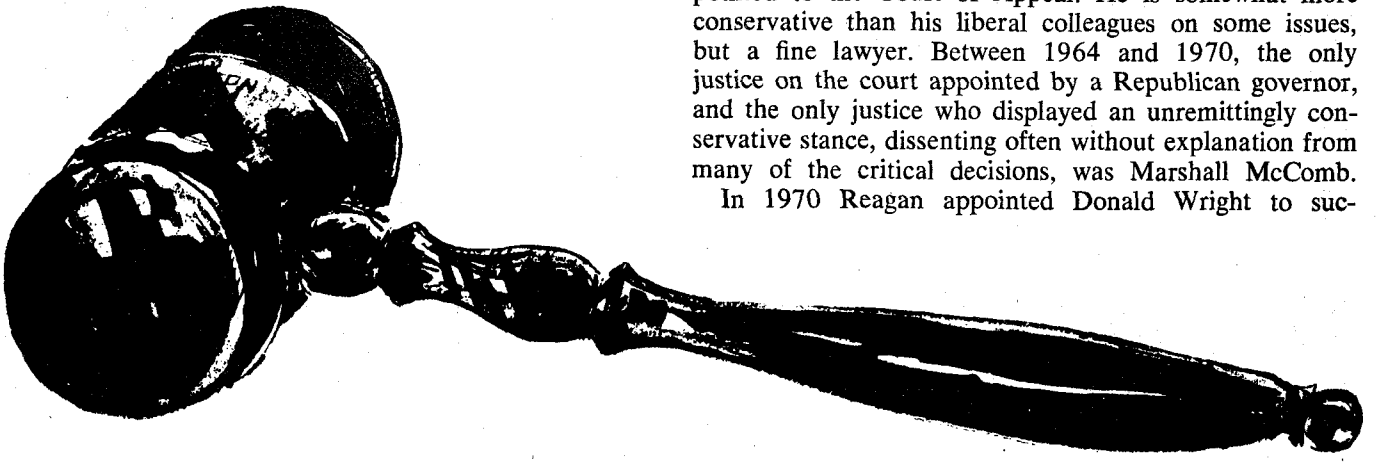
Repeatedly the California court has placed itself in the forefront of legal developments, not only in the constitutional sphere but in important common law areas as well. It led the way, for example, in holding manufacturers strictly liable to consumers for damage caused by defective products; in eliminating ancient and useless distinctions between "guests" and "invitees" as determinants of a person's right to recover for injuries suffered on the land of another; in limiting the effect of unfair "boilerplate" provisions in contracts between parties of unequal bargaining power, and in expanding the availability of class suits to consumers and environmentalists. The court's 6-to-1 decision on September 28 of last year, in the Mammoth Lakes case, in which it held that state and local government agencies must complete environmental impact reports before they can approve private construction projects that may have a "significant" impact on the environment, has been hailed by environmentalists as a major precedent.

While such decisions can properly be called liberal and indicative of an activist court, they display a quality of reasoning and scholarship which transcends political nomenclature, and which has compelled acceptance by other courts of varying complexions. Moreover, in relatively nonpolitical areas, such as conflict of laws (determining which state's laws should govern a particular transaction), the California court has made contributions to our jurisprudence that have gained national recognition. While evaluation of a court naturally depends to some extent on one's political outlook, there is a substantial consensus among lawyers and students of the law that, judged in terms of sensitivity to social and economic change, creativity and legal scholarship, the California court ranks very high—perhaps highest—among state courts in the land.

Undoubtedly a number of factors have contributed to the court's pre-eminence. The very size of the state, and its continuing dynamism, generate volumes and varieties of litigation which increase the likelihood that important issues will come up for judicial decision. The generally high quality of the California bar and emergence in recent years of numerous legal aid services and public-interest law firms help assure that issues on the cutting edge of social change will be adequately presented and forcefully argued. And, historically, California's political and social life has been animated by a quality of independence and experimentation—a willingness to try new ideas—which perhaps creates a climate receptive to judicial innovation. But that receptivity has its limits. Some of the court's decisions—for example, its decision striking down the 1964 initiative measure which passed by overwhelming popular vote and which would have eliminated California's fair-housing laws, as well as its decision protecting the rights of criminal defendants—evoked torrential protest and the first serious attempts in California's history to defeat Supreme Court Judges in plebiscites, held every twelve years for each judicial position. In the face of such opposition, the court has displayed consistently courageous commitment to its values.

In the last analysis, what makes a great court is great judges. Over the last three decades, in which the California court's pre-eminence was developed and established, it has been dominated by appointees of the only two Democratic Governors of this century—Culbert Olson (1939-43) and Edmund G. "Pat" Brown (1957-67). It is a coincidence, but one which nevertheless had profound impact on the court, that the two intervening Republican Governors, Earl Warren and Goodwin Knight, had opportunity for only one appointment each to the high court during their combined sixteen years in office, whereas Olson made three appointments and Brown eight. Olson appointed Phil Gibson as Chief Justice in 1940 and Roger Traynor, who later succeeded Gibson, as Justice in 1942. Those two men, of remarkable ability as jurists and administrators, established nationwide reputations as they guided the affairs of the court for thirty years. Governor Brown appointed the outstanding liberal justices of the contemporary California court: Mathew O. Tobriner, formerly a labor attorney, who brought to the court a philosophical scope and humanitarian concern reminiscent of Arthur Goldberg; Stanley Mosk, former state Attorney General and a strong supporter of civil rights and civil liberties; Raymond Sullivan, a master legal craftsman who has contributed substantially to the court's development; and the late Raymond Peters, a man whose keen sense of justice and intellectual rigor made him in many ways the court's conscience. Brown also appointed Louis Burke, a Republican whom Warren had previously appointed to the Court of Appeal. He is somewhat more conservative than his liberal colleagues on some issues, but a fine lawyer. Between 1964 and 1970, the only justice on the court appointed by a Republican governor, and the only justice who displayed an unremittingly conservative stance, dissenting often without explanation from many of the critical decisions, was Marshall McComb.

In 1970 Reagan appointed Donald Wright to suc-



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ceed Roger Traynor as Chief Justice. Wright's academic credentials were impeccable—Stanford *cum laude* and Harvard Law School—and he had been a judge for ten years. But his judicial experience had been in the Los Angeles Superior Court, a position of relatively low visibility, and the facts that he was a Republican, and that Reagan wanted him, made liberal supporters of the court a little skeptical. Wright surprised the skeptics. Joining with the liberal majority in most of the important cases, he has displayed a degree of independence and leadership reminiscent of Earl Warren after his appointment to the U.S. Supreme Court by Eisenhower. Indeed, Wright must have surprised Reagan, too.

The Governor is said to have been made exceedingly unhappy by some of Wright's decisions, particularly the death penalty opinion, which Wright wrote and which Reagan publicly criticized. Reagan's nomination of Clark clearly evidences a desire not to make the same mistake twice. More than that, the Clark nomination betrays a certain pique on the part of Reagan—a desire to "get even" with the court by appointing someone who is not only at political odds with the dominant majority but whose background and stature are at odds with the image which the court has created. Clark is Reagan's Carswell.

Quite properly, Clark's competence, rather than his politics, is the issue that dominates the controversy. Even assuming that an appointee's political philosophy could be relevant in extreme cases (such as in the case of Carswell, who was alleged to have racist views), there is so far no evidence of that in the case of Clark. And it is obvious to everyone involved that, if Clark's nomination is vetoed, Reagan may appoint someone at least as conservative. The only time in California's history when the Commission on Judicial Appointments exercised its veto power was in 1942. The commission (which included Earl Warren as Attorney General) vetoed Governor Olson's appointment of Prof. Max Radin of the University of California Law School, clearly on the ground that he was too liberal. Olson thereupon appointed Roger Traynor, of the same faculty and generally of the same political persuasion. That is hardly a precedent on which liberals would want to rely. And the current commission (which includes, in addition to Chief Justice Wright, Evelle Younger, California's conservative Attorney General, and Parker Wood, the presiding judge of the court on which Clark now sits) is not about to veto Clark on general political grounds.

Moreover, even from a parochial liberal point of view, the appointment of Clark, or any conservative, is not likely to alter the basic thrust of the court's decisions, at least not in the short run. There is a kind of institutional dynamics in the way courts operate that often transcends and shapes the individual judge. It may be the product of many factors: the presence of strong leaders within the court; the use of full-time and in some cases long-term clerks who assist in the writing of opinions; the inertia which develops from a sustained pattern of decision. Such factors may help explain, for example, why Mr. Nixon's appointees to the U.S. Supreme Court, while certainly having an effect, have not produced as wide a departure from the precedents of the Warren Court as many predicted. In any event, even if Clark were to cast his vote unwaveringly with McComb, the most conservative member of the present court, it should be possible to muster a "liberal" majority behind the main thrust of the court's decisions in the important areas of civil rights, civil liberties and criminal justice. In fact, a switch of one vote to join McComb in dissent would have produced a different result in only four cases decided by the court over the last two years.

It is, finally, the impact of Clark's appointment upon the stature and quality of the court that is the cause for concern. It is not in the abstract that his qualifications must be judged but in relation to the role which this particular court has played, and is capable of playing, in the development of our jurisprudence. And because that role is one of national proportion, confined to California in terms of jurisdiction but not in terms of influence, the difficult decision which the Commission on Judicial Qualifications must make in March is certain to attract national attention. □

THE ALTERNATIVE PRESS

JOURNALISM AS A WAY OF LIFE

DANIEL BEN-HORIN
Mr. Ben-Horin is an editor and writer for the New Times *of Phoenix. Earlier, he was a reporter and weekly columnist for the Arizona* Republic.

Symbols live on long after substance dies. "Underground press," whatever you were, R.I.P.

The underground press was variously born in 1964 and 1965 (when a group of papers including the Los Angeles *Free Press* and the Berkeley *Barb* began publishing); or in 1955 (when *The Village Voice* appeared); or at the turn of the century (when Socialist and Populist papers flourished). In any case, by the end of the 1960s every major American city, and many minor ones, had an underground paper that was publishing on a continuing, though often sporadic, basis. These papers hardly formed a continuous thread, but it was not unfair to consider them patches on the same quilt. They related with one another partly on the basis of politics, partly on the basis of culture and partly, perhaps crucially, because they shared a very particular time and place. Tautologically, they were all in the underground family because they all *wanted* there to be something called the "underground" (otherwise, "The Movement").

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But "underground," after all, means something very specific; it means "outlawed," and from the start underground press people were alternately pleased with the resonance of the word and aware of the limitations it placed on them. By the early 1970s the underground press was at its peak, but a growing number of people working on these papers saw the word "underground" as more a limitation than a glorious banner. And their change of heart was not purely semantic. Once starting a paper and surviving for six months had become a less rare trip, a more tolerant eye was turned toward a few of the artifacts of the straight press. Investigative reporting, for example; the possibility of combining radical analysis with long hours of poring over corporation commission records.

It is to the discredit of the liberal "straight" press that this flux beneath them went almost totally undetected. Feeling in accord with the *substance* of most basic underground press positions, but also feeling stylistically threatened, liberal writers adopted two misleading axioms:

(*1*) The new papers are to be judged purely as journalism; ergo, as journalism manqué.

(*2*) There is a finite area which may be neatly labeled "underground" and which is inhabited by some strange, or at least very different ("alienated," you know), creatures.

These axioms are crippling. The first obscures the fact that early underground papers and their successors have functioned as cultural (and social and political) phenomena as much as they have been exercises in journalism. They have served as laboratories to test ideas about social organization. When the women of New York's *Rat* throw out the men on the paper, or when the San Francisco *Good Times* (and numerous other papers) tries to integrate an absolutely egalitarian communal life style into the operation of a 28-page biweekly paper, what we have is not *just* good or bad journalism.

The second axiom draws a dividing line where none has existed for some time. Even more damagingly, it prevents one from seeing the multitude of linkages that are making their appearance and gathering strength. A journalistic cross-fertilization and hybridization is going on in the country. Some members of the new "family" haven't been introduced to one another yet, and if they were to be, would undoubtedly quarrel bitterly. Nevertheless, they're related.

For an operational definition of the old "underground" and the new "alternative," I'll turn to a widely published (*Creem*, *Fusion*, *Sun Dance*, *The Realist*, numerous underground papers) young journalist named Tom Miller. In August of 1971, a federal grand jury in Tucson sought Miller's appearance and testimony about his "radical" contacts (cf. Frank J. Donner and Eugene Cerruti, "The Grand Jury Network," *The Nation*, January 3, 1972), and in return Miller sought journalistic immunity. Miller informed the judge:

> "Underground press" [refers] to newspapers developed over the last five years which are concerned with nonconformist trends culturally and politically, and which operate on a low, low financial plane, if indeed any at all. Culturally this means new art forms—in music, dress, life style, cinema, graphics, writing, painting, photography, etc. Politically, this means all forms of anti-government activity and dissent. . . . These topics all are merged and constantly are tangentially related. . . . The "alternative media" includes all this and more. It . . . includes a number of publications which, although they are not as vociferous and forthright in their views, do serve, propagate and analyze the developing life styles in the country.

BOSTON ALTERNATIVE

In an early issue, *The Nation* will publish an article on the recent history of the alternative press in Boston and Cambridge. The author

Dennis Hale

lives in Boston and is book editor of *Worldview*.

The suggestive phrase, I think, is "includes all this and more." What follows is a discussion of some of what's included.

Bruce Brugmann, who runs the San Francisco *Bay Guardian*, looks like everyone's favorite high school teacher. He is in his late 30s, large, fair and tweedy, slightly preoccupied, but earnest and friendly when he fixes his attention upon you. He is so clearly separated from the youth culture that he wears a jacket and tie to work and says things like, "I'm first and foremost interested in putting out a paper, not in putting together a commune."

But the point about Brugmann is not that he and the *Bay Guardian* represent any kind of antithesis to underground papers but that he represents the cultivation of old journalistic standards in a new garden. He eschews Movement talk for newspaper talk ("I've never had a story bounced in my life—and the *Guardian*'s never had a story bounced"), and his style is considered misguidedly reformist by some Bay Area radicals. However, no one doubts his willingness to go to the mat, and Movement types admit he's made the right enemies since he began publishing in 1966.

A former Milwaukee *Journal* reporter, Brugmann knows how to conduct himself around "straights," even wealthy ones. That has been a decided help to the *Bay Guardian*, for which Brugmann has been able to raise $125,000 from a variety of donors in the past six years. Six months ago, the paper changed from an irregular monthly to a regular biweekly. It now costs $4,000 an issue—including a handful of salaries in the $100-a-week range—with an income of about $3,500 an issue, but Brugmann says the paper is selling 15,000 copies at 25¢ every two weeks, improving its advertising and rapidly cutting its losses.

Since its inception, the heart of the *Bay Guardian* has been rock-solid investigative reporting. Brugmann fairly glows when he speaks of following his stories with lawsuits, and the stories usually have the thoroughness of briefs (though, fortunately, they only rarely read like them). For example, the paper's research resulted in the widely acclaimed book, *The Ultimate High Rise* (fre-

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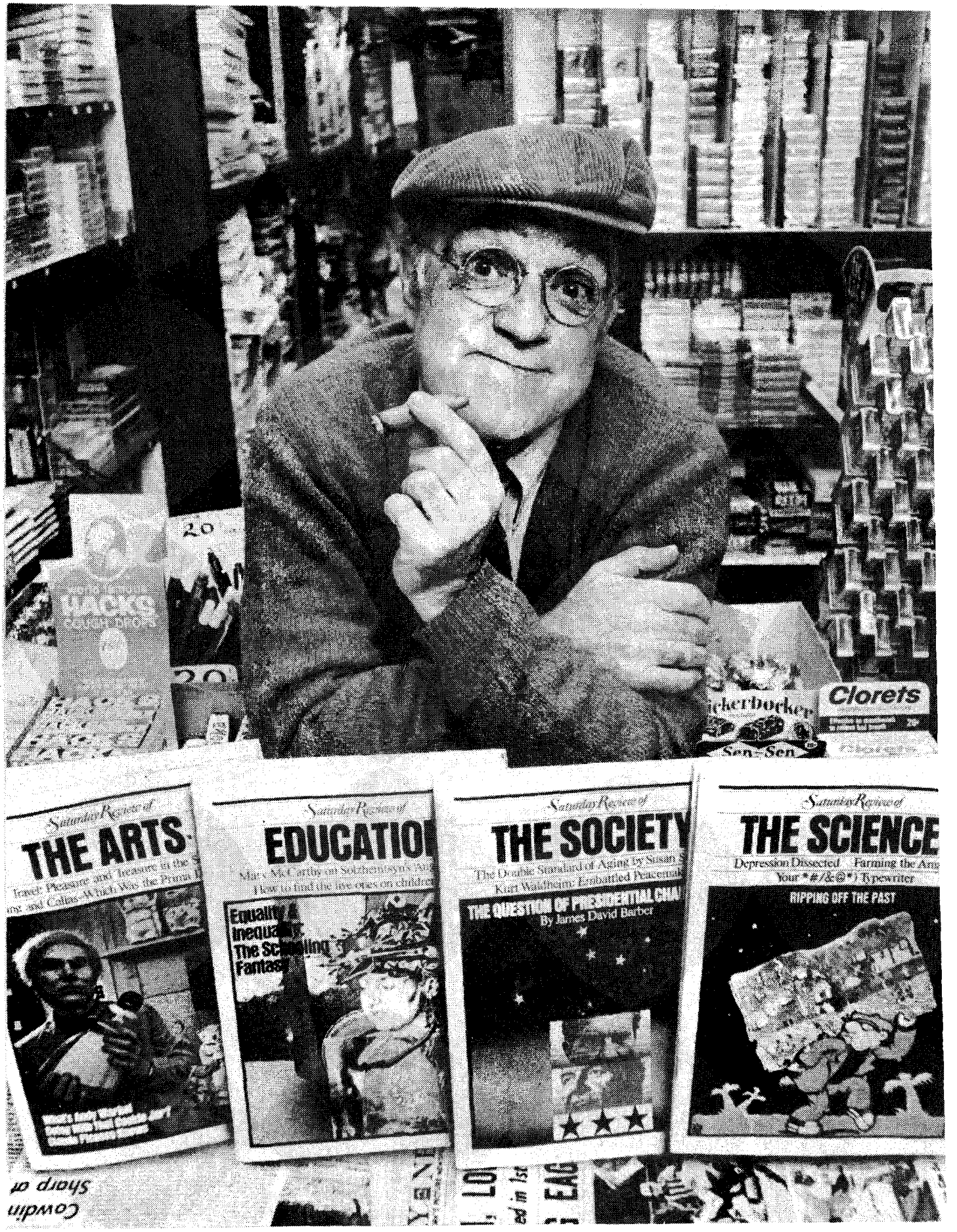

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- Slow Learners.
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quently used as a source book on how to fight city hall), and is also credited with mobilizing San Franciscans against the skyscrapers.

Brugmann knows that even in San Francisco a paper can't be fashioned from muck alone; there are just so many ACLU and Sierra Club members around. So the *Bay Guardian* shows an increasing tendency to broaden its scope, to reach out to the youth market it has never really attracted. It is running features, quasi-underground comics, music and other reviews, an extensive calendar, a free classified section and service articles.

The *Bay Guardian*'s most significant gesture toward youth takes place behind the scenes. For the past two summers it has run an intern program which attracts volunteer researchers from across the country, almost all of whom have had social-action experience, good grades and proved writing ability. That a paper with only a trace of youthful aura, but skilled in applying old journalistic virtues in the public's benefit, can interest such people in investigating city finances, urban tax reform, neighborhood politics, "Inventory Foundations in the Bay Area," and many other non-Woodstocky topics says something about the pool of talent that is waiting to be tapped.

If there has been one common denominator among alternative papers, it is that they have traditionally been short of money from the start. In this light, the recent—and ill-fated—effort to start a weekly paper in Los Angeles is of particular interest. The paper, called *LA*, sprang full-grown from a union of the ideas of former *Newsweek* contributing editor Karl Fleming and the purse of Xerox millionaire (and *Rolling Stone* board chairman) Max Palevsky. The $225,000 which Palevsky gave Fleming to launch *LA* gave the paper a professional gloss in its first months of operation. Fleming took considerable satisfaction in this professionalism, as expressed in Westwood offices, a thirty-person staff and expensive printing processes. By contrast, many alternative press people see professionalism as a vastly overrated commodity, tending to raise an elitist barrier between the medium and the community it wishes to serve.

LA published an interesting mix. The paper was centerd on service (*New York* magazine was the model most frequently mentioned around the *LA* office). At least two "where to get it best and for least" consumer articles, along with an extensive calendar/directory, provided an apolitical core to each issue. The other elements in *LA* were its craftsmanlike appearance and some good investigative reporting.

LA died last December, and the most obvious cause of its passing was money. All of Palevsky's $225,000 investment had been spent, the paper was still losing money, and despite what Fleming says was a verbal commitment to the contrary, Palevsky didn't feel like risking any more.

In the wake of *LA*'s departure, Fleming continued to speak optimistically of the viability of the *LA* concept. With $500,000, he said, he could create a "newsprint magazine," one that would avoid the invidious tabloid image while retaining the attractive features of *LA*. And it is true that *LA*'s combination of graphic innovation, service and investigation excited much interest and favorable comment. But there was also an essential contradiction at *LA*, which may have been as much a cause of the publication's failure as was the reluctance of Mr. Palevsky to part with more dollars.

LA combined the aura of the struggling alternative press with the gloss and professionalism of the business world. At the heart of this contradiction was Fleming himself. Before the first issue, he spoke of shared decision making, but he soon made it clear that *LA* was organized as a hierarchy, with himself at the top. Disgruntled *LA* writers, of whom there were disproportionately many, called Fleming autocratic and said that he had misled them about pay. It's undoubtedly true that great and successful papers have on occasion been produced by martinets, but in the straight press there's no illusion about who's running the show. *LA*, on the other hand, asked writers and others to work for an alternative pay scale—$30 to $50 for free-lance articles—but declined to adopt an alternative structure within the shop. Everything was on a "professional" basis, but the operation was not sufficiently professional to buy success and yet too professional to elicit the kind of amateur dedication that has allowed far less well-financed publications to survive.

So, the mixture that made *LA* interesting remains to be tried again, either by a group of committed people willing to deprive themselves and wait for their paper to grow organically, or by an even better-heeled organization, prepared to spend $500,000 to $1 million in order to buy a significant share of the market.

In exerting strong control over *LA*, Fleming—like Brugmann at the *Bay Guardian*—followed the journalistic maxim that "neither ships nor newspapers can be run by committees." A growing number of young newspaper people are beginning to question that assumption. To those who view papers as social laboratories as well as products, it seems logically absurd for a paper that preaches egalitarianism to have a boss. More and more such groups are trying to put out as good papers as they can while maintaining a collective organizational structure.

Before looking at a couple of these collectives, it's interesting to note a contrast between collectives and hierarchies in the matter of advertising. Thus the Berkeley *Barb* and the Los Angeles *Free Press* are both underground forebears and are both filled with Movement reporting and rhetoric. But both, like the less radical *LA* and *Bay Guardian*, have owners. And all four papers refuse to maintain any ideological criteria for judging advertising. As Fleming put it, "I think the idea of contamination by advertising is absolute bullshit."

Collectively run papers, by contrast, tend to see their advertising columns as extensions of their collective identities. They unabashedly label themselves advocacy journals—common beliefs, after all, are what link disparate types in a collective—and are disinclined to allow their ads to work against their goals. Sexism, for example, is a commonly accepted reason for refusing advertising space.

Otherwise, the collective papers do differ among themselves in organization, emphasis, financial stability and quality. One of the oldest and best of them is the San

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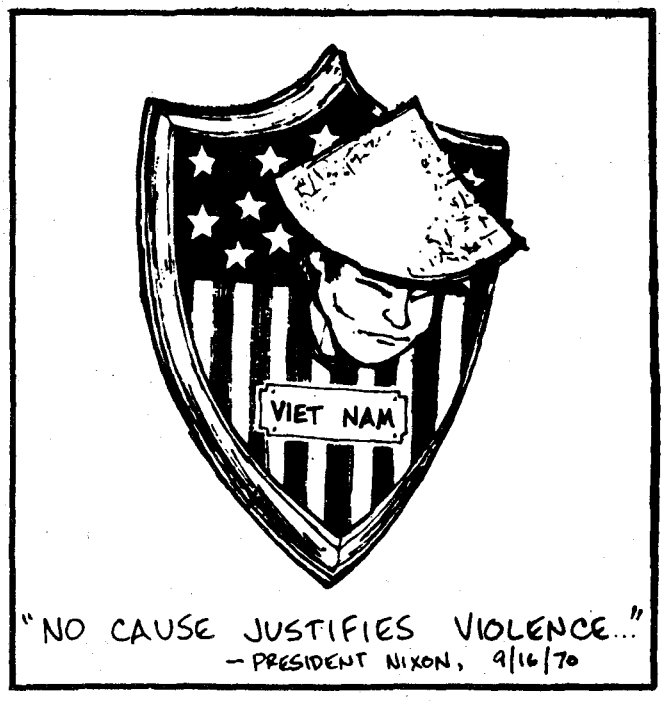
Diego *Door*. The *Door* has been around since mid-1968 and has undergone complete changeovers in staff and personality. At one time it was almost exclusively a rock music periodical. To some, rock may seem synonymous with the youth counter-culture underground, but in fact an increasing number of politically oriented alternative press people look upon the record industry—and its attendant sexism, hypes and rip-offs—with considerable disdain. The present *Door*, though it continues to show substantial interest in rock, is respected in radical circles. The paper comes out biweekly, runs 28 pages and sells in the area of 5,000 copies, while carrying about $1,000 in advertising, much of it related to music.

In copy and appearance, the *Door* is far ahead of almost all other underground papers. The news columns combine radical analysis with thorough investigative work —sometimes under the byline of an "Uncle Muck." C. Arnholt Smith was an early *Door* target, and even after his climb to national notoriety *Door* articles provided coverage overlooked by the national press (not to mention San Diego's unspeakable pair of Copley papers). The right-wing terrorist group called "The Secret Army" has been an unabated nuisance in San Diego for years. *Door* research has helped keep the heat on it and the September 17th issue charged FBI complicity



The Great Speckled Bird

in Secret Army activities. The paper's rock, and other entertainment coverage, is detailed enough to interest the *aficionado*, but light and humorous enough to attract the general reader.

The June 8th issue marked *Door*'s fourth anniversary, and Doug Porter of the paper's staff discussed its attitudes and problems:

> The basic criticism that we have of ourselves is that we're too distant from what's coming down in the streets of the communities that we serve. Already we're starting to look for input from groups and organizations that are playing vital roles in making this neo-Babylon that we live in into a better place. We're trying to make the paper *whole*, instead of having a news section and a "Doorticulture" section. . . .
>
> As it stands now, there is simply no way we can cover everything that comes down. Nobody that works on the paper gets paid, so we all must spend part of our time hustling money to pay for the vital necessities. Part of the reason that none of us get money from the paper is because we get ripped off so often by advertisers. At present we're owed at least $3,000 in overdue advertising revenue.
>
> The essential difference between an honest alternative press and a "straight" daily (and dishonest attempts at alternative journalism) lies in their internal workings. The *Door* exists as a collective, an extended family. . . . Instead of editors, we have "areas of responsibility." . . . Our ties to the *Door* are emotional as opposed to monetary. . . .

New Times, the weekly paper on which I work, is published in Arizona, a state which compares unfavorably even to Southern California when it comes to defining an audience ready and eager to support an alternative paper. So we have had to construct a readership *de novo*. To our advantage, competition has been slight, and the result is an unusually solvent alternative paper in a highly conservative area.

San Diego, of course, is also a conservative city, but its reservoir of change-oriented energy and expression was large enough to let the ancestors of the present *Door* believe that an alternative paper could be *sold* there. The founders of the *New Times,* in May of 1970, had no such expectation. Meeting in an *ad hoc* group after Kent State, their immediate intention was somehow to overcome the apathy and lack of communication that they felt around them, both among students and in the community at large. Without journalistic experience, with no dominant leader, publishing near Phoenix, in a city that had never supported an underground paper, the *New Times*, in retrospect, seemed destined for a brief run. It was saved by the combination of a few dedicated people, a life style that left humorless college papers far behind, and the perverse "luck" that the self-evident conservatism of the area forced the publishers into distributing the paper free on Phoenix campuses and trying to support it with advertising.

Two and a half years later, the *New Times* has doubled its ad rate, its number of ads, its number of pages and its circulation (now 35,000). It has expanded to schools in Tucson and is paying eight full-time staff members $85 an issue, as well as numerous part-time writers, artists and circulation and advertising people. It has attracted workers from straight media and a core of several hundred subscribers to supplement its giveaways. Now it finds itself facing the contradiction, inherent in American society, between being a financial success and being a radical medium.

Editorial decisions have become more complex. Originally, the paper's audience was entirely on campus; now its staff must consider how to divide up limited space to serve a variety of reading constituencies. The *New Times*'s solutions to the contradiction are, not surprisingly, contradictory.

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During its first two years, the paper found it relatively simple to operate on the double premise of commitment to collective organization and commitment to "change." With "prosperity" comes the problem of applying collectivism to eight people instead of four. And simply being for change is an inadequate policy when the number of "out" constituencies demanding space far outstrips the number of inches available in the paper. The heady vision of appealing to both "progressive businessmen" and apolitical acid heads is confronted with the reality that the rock-satire-comics mix that brews nicely on campuses is almost directly antagonistic to the serious, in-depth local reporting most post-collegians demand before they will subscribe to or support a paper.

Advertising also poses a space problem. With 50 per cent of the space given to ads, the paper looks wealthy to some readers, rather than roughly solvent. Even more disturbing to the staff is the possibility that the paper they publish in an effort to help change society is mainly perpetuating that society's defects by giving amoral corporations a chance to push their wares and urge their ethic in an attractive-to-youth publication. The staff has moved to de-emphasize advertising's position within the paper and to refuse any ads that "visually offer women sexually to men . . . [and] to discourage all advertising which perpetuates images we feel to be alien to a free and humane society." (The quote is from a statement on advertising policy in the August 30th issue.)

But the staff's desire to become less dependent on advertisers, and the pressure of various activist groups for more coverage (i.e., a bigger paper), inevitably imply another source of income. So the *New Times* is energetically wading into a public stock offering, complete with registration and certified audit—a circumstance which seems certain to complicate matters even further.

Perhaps because it has done better financially than other underground papers without becoming "big time," as a paper in a more sophisticated area probably would, the *New Times* situation is an amalgam of the problems, possibilities and processes that confront the alternative press. One *New Times* staff member, Michael Lacey, had this to say about the contradictions that arise:

> Something that is a bigger contradiction than advertising vs. radical politics is the contradiction between counter-culture life style and newspaper-living life style. We are a culture that eschews the 9-to-5, take your work home from the office, pressure ulcer syndrome. Yet putting out a newspaper creates a situation that is more intense than any suburban commuter's job in New York. One is almost forced to function in a collective manner because there is no financial independence. You have to think paper twelve hours a day, seven days a week. You have to be organized, efficient, *businesslike*. And you have to do it with the same people all the time. You become insulated, inside yourself and a small group.
>
> And what are the rewards? Where is the satisfaction? No one sees the system changing. . . . To stay alive you have to create an *institution*, a tough thing to do if you're into Woodstock. Reading the good-by soliloquies [in two folding papers], I felt that they finally realized that they had created an institution, with all the inherent evils. . . .
>
> Historically, I think, we're in the middle. Change isn't going to come without some form of permanence. But it's the nature of permanence, of institutions that we have to change.

A kindred voice is to be heard from Colorado, a politically mixed state with a correspondingly mixed media. Some noteworthy periodicals are published there —including *The Unsatisfied Man* (a journalism review) and *Cervi's Journal* (an outspoken weekly)—but they speak primarily to a straight, older audience. There are some strong college papers, but until early 1972 there was no vehicle for communicating alternative culture ideas in any broad way.

Then, on February 10, 1972 came *The Straight Creek Journal*, born of a merger of four considerably different publications. A year later, *Straight Creek* is still around and getting better, with coverage encompassing rock music, the cultivation of inner peace, City Hall and Roy Ash. The paper has had a far from easy time, but its future looks secure as a result of selling some $80,000 worth of stock. In letters written during *Straight Creek*'s first year, Stephen Foehr, managing editor and central cog, described the ups and downs:

> *March 20.* The paper does not have a personality or definite voice yet. We are trying not to limit ourselves to the long-hair people entirely. . . .
>
> *March 30.* Personality and personal clashes did the inevitable and clashed. We are over the worst of the ego trips, etc., now and I feel—for the first time—it is coming together.
>
> In Boulder . . . the university students have their own daily, and not a bad paper. Advertisers are attracted to it because of its captured audience and to the free city/county weekly because of its wide readership. Our problem is defining our market and readership—not so much defining it as finding it.
>
> We have been alert, too much so and without humor —to avoid falling into the pit of being a hippie underground with limited appeal.
>
> All major policy decisions in anything . . . are made by a group decision. Airplanes and newspapers cannot be run by communal decisions . . . [but] I strongly object to editorial dictators and see hope that a group of individuals can create a strong paper. It certainly is a greater hassle than one man.
>
> *May 25.* How does *Straight Creek* eat? Well, very little for the most part. . . .
>
> We went through another upheaval two weeks ago. We lost all but one editor (me) and most of the Denver staff (personal hassles). . . . We have started paying writers and artists $5 per piece of work which has raised morale considerably.
>
> There is a great deal of enthusiasm about *Straight Creek*. It is the only alternate paper in the Denver-Boulder area and many dissatisfied writers, etc., are interested in using us for an outlet.
>
> *Oct. 24.* Have a couple of potential investors but at the moment it is all talk. Business can be such a drag.
>
> The piece we did on the Olympics was read into the *Congressional Record* by Fred Harris; two local TV stations, a radio station and numerous papers, local and national, have picked it up.
>
> *Dec. 5.* Still experimenting with a front-page layout trying to break the hippie image. I think the only way is to educate the people with a PR campaign. . . . Bought street vending boxes . . . painted them bright

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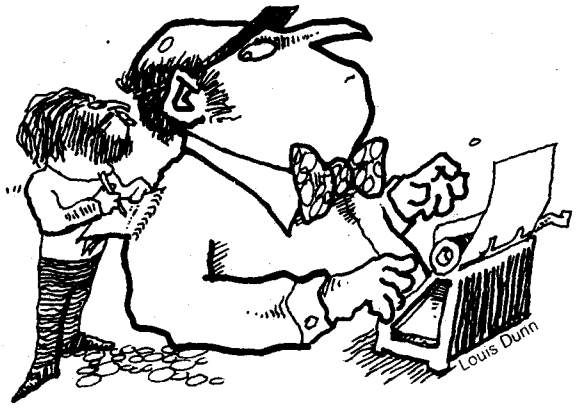

San Francisco Bay Guardian

rainbow colors and have met with limited success [but it's] amazing how people will rip you off.

At the moment am paying three full-time news writers, one formerly UPI, one formerly Detroit *Free Press*, and another a local product.

We are evolving more into a hierarchy, but not so strict people cannot overlap. . . . I try not to be dictatorial but let everyone have a say. . . .[I] think I will start telling them how things will be done and riding people harder. We have some people who work their asses off and others who coast. . . .

Where it's all leading I certainly can't say for sure. But there are some signposts. Perhaps the most understated difference between the alternative press scene of today and that of five or eight years ago is that there are now so many more people with press experience around. The cross-fertilization on a personal level is becoming intense and multi-directional. The people who write for the "hip" music-politics magazines like *Rolling Stone* and *Fusion* write also for *Esquire* and *Playboy*. The circle widens. The July *Creem* reprinted an article from *WIN*, the completely noncommercial (and cohesive, balanced, entertaining and provocative) periodical of the War Resisters' League. The author of that article, Craig Karpel, is a contributing editor of *Esquire*.

As writers and editors move from underground papers to music papers and to liberal magazines and back again —as the distinctions evaporate—it doesn't seem unreasonable to believe that more than manuscripts will flow across the broken barriers. The people who put out *Creem*, record ads and all, live collectively on a farm outside Detroit and make $25 a week. *Harper's* ran an article on CIA involvement with drug traffic in Southeast Asia two years after *Ramparts*. Agnew may soon *long* for the day when the effete intellectuals were preparing his morning news.

Not all of those involved with the underground press movement think that the increase in traffic between new and established journalism, and the growing attempt of new papers to attract a broad base and achieve durability, are healthy developments. Some ask if getting articles in *Playboy* is what writers interested in bringing about radical change in this country should be about. It's a tough question. Writers, even those with radical politics, have writers' egos. And radical politics itself has undoubtedly become diffused in the last several years. Few speak of "The Movement" any more. In any area where there are a large number of alternatively minded people there is a correspondingly large amount of confusion.

A kind of geographic trend has emerged. In the major cities, and on a national level, the impulse seems to be to reach for the brass ring—to parlay alternative politics and culture into mass circulation, heavy advertising (with just about all advertisers not only welcomed but solicited), competitive wages and inbreeding with other forms of media and political and social action. That tendency is toward what Andrew Kopkind (in the September 26th *Boston Phoenix*, a prime example of the tendency) calls, "magazine events, not political events."

It is in the second-line cities—in Atlanta, San Diego, Phoenix, Denver, Dallas, Pittsburgh, etc.—that papers continue to emphasize the community orientation that was so important in the development of the underground press. In these cities it is still possible to sit in a medium-sized room with representatives of *all* the constituencies the paper wishes to serve. Earlier papers made the erroneous assumption that such groups would identify with one another (all brothers and sisters in The Movement) and with the paper, regardless of *quid pro quo*. Kopkind seems to think that the same process will adversely affect all underground papers as their total constituency grows and diversifies.

I'm a little more optimistic, guardedly so. I don't dispute that "making it big" has for underground papers been synonymous with stressing media "realities" at the expense of political and social visions (particularly visions about collective internal organization). But, it also seems to me that the experiences of *The Village Voice* and the Los Angeles *Free Press* have caused their descendants to begin active questioning of whether "making it big" is really such a desirable goal. It is indeed inherent in the journalism "game," not to mention the American Dream, to reach for more circulation, more ads, more influence. But even as some alternative writers and papers succumb to either the lure of bigness or the rigors of trying to make it big, others are increasingly measuring themselves by different standards: degree of interaction with community groups, degree of nonsexist, collective organization, degree of active participation in local political and social developments.

Whether or not the future holds bigger and more affluent alternative papers is at best problematical. But bigness and affluence were never the conscious aims of the underground press. It seems highly relevant to me that casette television is already here. Within a few years it will be close to omnipresent and the effect on everything printed will be mammoth. If the entire experience of the alternative press serves to do nothing more than produce a cadre of media-aware workers with more or less nonhierarchical and nonsexist views about personal and job relationships, I would say that the alternative press has earned a large and well-deserved niche in this country's history.

In any case, the meiosis of the alternative press is just beginning. This final reminder seems in order: *The Washington Post* began publication on December 6, 1877. It printed 4 pages, sold at 3¢, and was a prime example of a much excoriated phenomenon called "the yellow press." □

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BOOKS & THE ARTS

Pull the Ladder Up, Jack—I'm on Board

INEQUALITY: A Reassessment of the Effect of Family and Schooling in America. *By Christopher Jencks. Basic Books. 399 pp. $12.50.*

GERALD CHASIN
Mr. Chasin teaches sociology at the Polytechnic Institute of Brooklyn. He is the co-author, with Barbara H. Chasin, of a book to be issued this spring, Power and Ideology: A Marxist Approach to Political Sociology *(Schenkman).*

This book was written by Christopher Jencks on the basis of three years of research completed by himself and eight highly competent colleagues at the Center for Educational Policy Research at Harvard (CEPR). The research was supported in large part by a sizable grant from the Carnegie Corporation. Although Jencks himself actually wrote the book, it is not clear to what degree his colleagues agree with his approach and conclusions. It is also not clear whether their research was framed expressly in terms of the issues raised by the author, or was unrelated to the specific purpose of this book. Because of his position on the Harvard faculty and as a member of the prestigious CEPR, the volume was bound to be given serious notice. It has already enjoyed that—and in some quarters a favorable response.

Jencks's approach is to cloak what are basically highly conservative conclusions in the pseudo-objectivity of quantitative social research. The study is based heavily on statistical analyses; Jencks admits no other types of data in arriving at his conclusions. But while he relies upon quantitative data gleaned from social surveys and the census, and utilizes sophisticated research methods, the approach of the study is nevertheless loaded to produce a certain kind of result.

The book is concerned with the effects of family background, genetic factors and education on economic and social inequality in America. The author's conclusions refute both the liberal and radical views of class and education. Whereas liberals see social class stratification as inhibiting social mobility that might otherwise be achieved through merit, and education as increasing opportunity for people from all backgrounds, radicals assert that the educational system is a means of reinforcing and maintaining class privilege. On this latter view, rather than equalizing opportunity and serving as a means of establishing the meritocratic society, the structure of education in America is stacked against the poor and minorities through such devices as culture-biased "IQ tests," unequal school facilities, and financial and cultural barriers to continuing education beyond high school. The result, according to the radicals, is that the poor and minorities do not perform as well as the sons and daughters of the middle and upper-middle classes; they are therefore disqualified for higher status and better paying jobs, and relegated, like their parents, to the lower social and economic levels of society.

In reply to these views Jencks asserts that social and economic inequality is not explained by the effects of schooling or family background. Neither do genetic factors or "cognitive abilities" make a difference in producing inequalities, as conservative social scientists such as Jensen, Shockley and Herrnstein have alleged. Jencks methodically produces statistical data to support his conclusions. He attempts to show that "cognitive abilities," "the ability to manipulate words and numbers, assimilate information, make logical inferences, and so forth," have little effect on inequality. Moreover, neither the school's resources, social composition, curriculum, or tracking policies, nor the student's family background nor racial desegregation have a significant effect on IQ test scores.

Likewise, neither amount of education nor IQ test scores have an important effect on adult occupational status or income. In other words, neither mental development (as measured by IQ test) nor adult occupation or income are explained very well by what the schools do. Therefore, the schools cannot be said to provide a means for upward (or downward) mobility in terms of occupation and income. They cannot serve as a means of institutionalizing class privilege because they are simply irrelevant to the social and economic inequalities that exist in the United States. For that matter, Jencks says, social class background, in terms of father's occupation, education or income, is itself not a strong factor promoting inequality. We are thus left with no explanation for the extreme inequality which exists in the United States.

Faced with these findings, Jencks presents his own model for explaining inequality. Here for the first time he departs from the use of statistical data and develops an analysis that is more speculative in character. He believes there is an "enormous" amount of social mobility in America, though the children of the poor have relatively meager chances of extricating themselves from poverty. School reform, Jencks explains, is not the means of improving the chances of mobility because schools do not develop the kinds of skills necessary for success. Mobility does not depend upon the kind of merit which is generated by the educational process. Success in an occupation is not a matter of "cognitive skills" nor education. Instead, it depends upon luck and job competence, which in turn seem to depend more upon personality factors than technical skills. According to Jencks, this makes it hard to envision and develop strategies for reducing inequality. Since we do not know how to equalize luck or personalities, we will have to reduce inequality, not through institutions such as the schools but directly through political control of the economy. This, to Jencks, "is what other countries call socialism." Instead of trying to equalize competition we ought to reduce the rewards of competitive success. The author suggests that this could be done by constraining employers to reduce wage disparities; the state could help by providing income supplements and free public services for the poor; and taxation could be made more progressive. What the schools do is to serve as selection and certification agencies—they do not create inequality. Much of the variation in social status, according to Jencks, is probably due to chance, since there are enormous status differences among individuals with the same education, family background and IQ test scores. There is, in short, no known way in which to equalize competence with regard to the traits that make some workers more valuable to employers than others.

To a degree, the conclusions in this volume elude categorization in terms of Left or Right. Jencks sometimes employs radical rhetoric and he calls for socialism at the end of the book; this may cause him to be labeled radical. But he does not develop a model

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for Socialist change nor does he outline a coherent and realistic program for the removal of inequality through political action. His espousal of socialism notwithstanding, Jencks's methodology, interpretations and approach lead him directly to reactionary conclusions. In addition conservative biases may be detected in the intricate mosaic of ideas he presents.

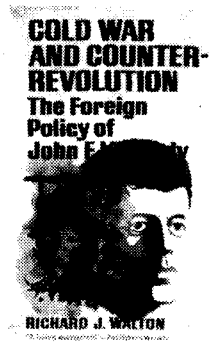
As I suggested, the approach of this study is strongly statistical and it employs the latest sophisticated techniques: computers are used to generate complicated analyses and large amounts of data; correlation, regression and path analyses may be found throughout this volume. Hence, while the book is written ostensibly for the general public it is hard to see how anyone not familiar with the techniques of social research can fully evaluate the conclusions it offers. In an attempt to make the reader literate about statistics, Jencks jams about half a semester's worth of statistical techniques into an appendix. Digesting this appendix would still not enable the reader to evaluate his findings.

It is at this point that the author's biases become significant. The apparent importance of a particular factor is of course largely affected by the way in which it is presented statistically. Examples of this occur in Appendix C ("A Layman's Guide to Statistical Terms"). The manner in which the author presents the relationships between education, family background and adult income and occupational status makes them appear to be smaller than alternative means of presenting them would. In addition, many social scientists would interpret Jencks's data in an entirely different way. For instance, Jencks reports what others would regard as strong correlations between educational attainment of the son and the father's occupation (0.50), between the occupational status of the father and that of his son (0.50), and between a (white) man's education and his occupational status (0.65). Findings such as these not only suggest a high degree of correlation between the sets of factors, but these relationships are not at all new. In their study, *The American Occupational Structure*, Blau and Duncan present similar findings. These researchers, however, interpret the findings as being significant, whereas Jencks does not. And yet correlations of this magnitude are rarely exceeded in social research, because of the crudeness of the measurement techniques used and the many uncontrolled factors which affect a study. Because of such complexities, most social researchers do not feel that they can predict an outcome such as adult occupational status or income with a high degree of accuracy. Any factor, such as family background, which can account for a noticeable portion of the variation in occupational status or income is usually considered important. Jencks chooses not to consider them important; his conclusions simply presume family background to be not very significant in explaining the inequalities which abound in America.

Jencks's analysis of inequality in income and occupational status is limited to men. He makes no attempt to explain why women are relegated to lower status occupations and receive less income than men, even compared to men working at the same jobs. His only comment, that the subject needs further study, suggests a rich sense of humor. Blacks fare no better in this report. The prime example of inequality in the United States is the inequality between blacks and whites, and any attempt to analyze social injustice should focus heavily on racism; Jencks gives the subject only scant attention, and implies that he is not really certain whether it is racial discrimination or cultural difference that accounts for the low status and income position of blacks.

In an off-hand manner, Jencks provides further support to the arguments put forward by writers such as Arthur Jensen, William Shockley and Richard Herrnstein, to the effect that genetic differences account for the variation in intelligence between individuals, and more especially, between racial and ethnic groups. In Herrnstein's view genetic differences have resulted in present-day social and economic inequality, and since it is a matter of biological structure there is little we can do about income and status differences. Although Jencks uses the term "cognitive skills" instead of intelligence, he nevertheless ends up analyzing IQ test scores and discussing the results. Although never alleging that "cognitive skills" are significant in any way, he nevertheless links them to genetic structure. Meanwhile, in Jencks's estimation, Jensen, Shockley and Herrnstein are not being racists because they are interested in the relationship of genetic factors to intelligence. The arguments of Jensen, et al., while overstated the author says, are "undeniably correct." "Whereas Jensen and others argue 80 per cent of the variance in IQ scores is due to genetic factors, the correct figure is probably more like 45 per cent." Environment, the author continues, ex-

"It is time to look at the Kennedy of life, not the Kennedy of legend."



Cold War and Counterrevolution

by Richard J. Walton

This is a radical re-evaluation of President John F. Kennedy's foreign policy. Basing itself squarely on the available evidence, *Cold War and Counterrevolution* contends that Kennedy was a hawkish counter-revolutionary whose vigorous anti-communism prevailed over his sympathy for the oppressed peoples of the world. "Walton's historical perceptions are a national gift." – Joe Flaherty. At bookstores, **$1.45**

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plains about 35 per cent of the variation in IQ test scores, less than do genetic factors (although neither factor is decisive by itself in his estimation).

Jencks is lending weight to the view that genetic factors affect intelligence. In fact no direct relationship between genetics and mental abilities of any kind has been isolated by psychologists or biologists. They are only *presumed* by some to exist. But Jencks manages to put a number on the importance of genetic factors in "cognitive skills." Through complicated statistical legerdemain, which most readers will not have the foggiest notion of how to follow, Jencks derives his 45 per cent figure (give or take 20 per cent either way) as an estimate of the degree to which "cognitive skills" are inherited.

The procedures he uses are inexact and highly dubious. They are heavily based on studies of identical twins which have shown contradictory results, are held in question by most psychologists, and are criticized by most textbooks on the subject. Why go through this procedure at all except to dazzle the reader with a display of expertise? In fact what are "cognitive skills" anyway? The ability to make logical inferences—using whose logic and in what circumstances?

Recent discoveries in genetics have held out great promise for scientific advances which have not yet materialized. They have captured the imagination of many people. Social scientists such as Jensen, Shockley, Herrnstein and Jencks have played on these discoveries to present their own pseudo-scientific ideas. Jencks does not question the culture-biased nature of IQ tests and ignores a whole literature which supports the view that they put minorities and poor whites at a disadvantage. There is much evidence that black children tend to do poorly when tested by whites, and women to do poorly in competition with men. Jencks ignores these studies out of bias. Anyone familiar with the subject could be expected to find that Herrnstein is careless and distorts or ignores much evidence. Yet Jencks, who is a trained social scientist, accepts Herrnstein as reliable.

With regard to his conclusion that education makes no difference in future job status or income, Jencks has omitted reference to a study of more than 9,000 college graduates done by Havemann and West *(They Went to College)*, which shows that college graduates tended to come from families in which at least one parent had attended college; had earned considerably more money, even job for job, than nongraduates; and that the more prestigious the college or university attended, the more one earned, with Ivy League graduates earning the most. Jencks alludes to this study in a footnote but does not mention or discuss its findings.

In a final note the author discovers, using survey data, that job satisfaction has very little connection with occupational status and, in addition, there is only a small relationship between being satisfied with one's earnings and general job satisfaction. Educated workers, moreover, do not find their jobs appreciably more challenging than do uneducated workers. In short, status, earnings and education do not make people more content with their jobs. Again, this is statistical sleight of hand. Depending upon what degree of relationship a researcher wishes to consider significant he can come to widely differing conclusions. Many social scientists consider statistical relationships of the magnitude of those Jencks cites in this instance as being important.

Jencks's study presents a point of view which it claims to have derived from an objective assessment of the causes of inequality. But it is not at all objective, despite the use of computers and statistics. I would categorize this volume as one of the series of books and articles written by prominent social scientists which form the conservative counter-attack on liberal and radical ideas. Others in the series are writings by Jensen, Shockley and Herrnstein, who have tried to explain racism, poverty and inequality by reference to genetic-intelligence factors, and writers such as Edward Banfield *(The Unheavenly City)* who blames the plight of the urban poor on their cultural shortcomings and personality weaknesses. □

Vanguard of the Evolution

DESIGNING THE INDUSTRIAL STATE: The Intellectual Pursuit of Collectivism in America, 1880-1940. *By James Gilbert. Quadrangle Books. 335 pp. $10.*

RICHARD W. FOX

Mr. Fox is doing graduate work at Stanford University, and teaching a course in the History Department on "American Socialism in the 20th Century." He is also writing a study of Morris Hillquit.

No period of American history is undergoing such thorough re-examination as the "Progressive era" from 1900 to 1920. Until recently the standard view among historians was that "progressivism" signified a broad middle-class movement to curb the trusts by the use of government regulation, and to restore both the competitive position of the small entrepreneur and the moral hegemony of the native Protestant. But further research by Gabriel Kolko and others has suggested, for example, that progressive reforms were often pushed by big businessmen themselves in an effort to rationalize industry in cooperation with government. As a result some historians, among them James Gilbert, are proposing that the concept of "progressivism" be dropped, since it imposes a false unity on the period.

In this ground-breaking volume Gilbert has tried to probe beneath the plethora of reform proposals and enactments of these decades by focusing on what he calls "the intellectual pursuit of collectivism in America from 1880 to 1940." Building on the work of James Weinstein and Christopher Lasch, he describes the growth in that period of an intellectual elite devoted to the belief "that modern social organization ought to emulate the contours of industrial organization." Just as industrial harmony depended upon the successful balancing of the three components of the corporation (workers, managers and stockholders), social harmony depended on establishing an equilibrium among workers, capitalists and the public. Intellectuals came to see themselves as a "professional public interest," serving only "science" and society, not their own or anyone else's class interest. Conceiving of the state as a "neutral broker" and of themselves as the experts called upon to staff it, they sought an extension of its powers without sensing the danger that uncontrolled bureaucracy might offer to their ideal program.

By the First World War intellectual life had been to a large degree "nationalized." The local discussion clubs and municipal reform bodies of the 1880s and 1890s had coalesced into national groups like the Socialist Party and other progressive organizations. Intellectuals "were developing a base of operations outside the ministry, academics, politics, or private patronage." Moreover, despite their conviction that they were neutral arbiters of the public interest, they were in fact "highly biased in favor of continued social evolution." Since from their standpoint they were uniquely equipped to grasp the coming developments, they

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came to see themselves as the indispensable vanguard of the evolution.

Gilbert's analysis is important in several respects. It enables us, first of all, to make sense of the near identity of world views among Socialist and non-Socialist reformers in the early twentieth century. "Both relied upon Darwinian metaphors and the predictions of modern social science. Both defined the trust or corporation as the primary force of progress." And both saw intellectuals, i.e., themselves, as being "at the leading edge of civilization." In addition, by focusing on the class position of the emerging intellectual elite, we can make better sense of the fratricidal split in the old Socialist Party between manual workers and "brain-workers." The mutual distrust of those two groups, as George Lichtheim has shown, has undermined many Socialist movements besides the American.

Gilbert also gives attention to the international context of reform in this period. American intellectuals before World War I often saw Germany as the vanguard of the corporate society, just as intellectuals in the 1930s looked for leadership to the Soviet Union. Reformers likewise pointed to England, New Zealand, and even Japan in an effort to establish the universality, and thus the legitimacy, of the reform impulse. "To argue the international nature of America's problems was to attack indirectly the conservative assertion that America's uniqueness meant it could rely upon the old individualism to solve its social problems."

Despite the collectivists' shared assumptions about the nature of social evolution and the corporation as a model of social organization, they did not coalesce around a common political program. Gilbert devotes half of his book to describing this practical diversity, focusing on the careers of Edmond Kelly, King Gillette, Charles Steinmetz, William English Walling, Reinhold Niebuhr and James Burnham. Gilbert makes no claims about the representative character of these figures; he uses them only to establish his point that collectivism was not a coherent political ideology but rather a diffuse, pervasive set of assumptions about the good society and the social role of intellectuals.

The one question which Gilbert tells us he cannot answer was why collectivist assumptions did not filter down into the popular political arena, but remained "a loose set of ideas" by which intellectuals "explained American society to other intellectuals." The answer which nevertheless emerges from his analysis is that collectivism was too obviously the ideology of a rising class of intellectuals to be able to appeal to the middle or working classes, not to speak of the wealthy.

Moreover, although collectivist theories were more "realistic" in their attention to the primacy of the corporation than, for example, Woodrow Wilson's New Freedom—and might therefore have been expected to exert more influence on the masses of Americans—they were "reductionist" in their tendency to see man strictly in terms of his economic function, in relation to the corporation. Here is the dual failure of collectivism: its economic determinism (and consequent devotion to the reordering of society on the model of functional, corporate units) and its elitism. Collectivist theory could find no place for the workingman but his place in the factory and in the statistics of the central planner.

Gilbert's study is an initial effort to redirect our approach to the "Progressive era," and its inevitable omissions should be regarded in that light. He devotes much less attention to the 1930s, for example, than to the earlier period. But as historians continue to investigate "the age of reform" they will come back again and again to this book. □

Toad a la Mode, Garni

THE TIME OF THE TOAD AND TWO RELATED PAMPHLETS: A Study of Inquisition in America. *By Dalton Trumbo. Harper Perennial Library. 161 pp. Paper $1.50.*

JOHN BRIGHT
Mr. Bright, a Nation *contributor over many years, is a veteran screen writer who has just completed a novel,* Worms in a Winecup, *about Hollywood in the 1930s and 1940s.*

To justify the bizarre title of his book, Dalton Trumbo wrote these trenchant paragraphs:

> Some time before he became involved in the Dreyfus Affair Emile Zola wrote an article called "The Toad." It purported to be his advice to a young writer who could not stomach the aggressive mendacity of a press which in 1890 was determined to plunge the citizens of the French Republic into disaster.
>
> Zola explained to the young man his own method of inuring himself against newspaper columns. Each morning, over a period of time, he bought a toad in the market place and devoured it alive and whole. The toads cost only three sous each, and after a steady matutinal diet one could face almost any newspaper with a tranquil stomach, recognize and swallow the toad therein, and actually relish that which to healthy men not similarly immunized would be lethal poison.
>
> All nations in the course of their histories have passed through periods which, to extend Zola's figure of speech, might be called the Time of the Toad: an epoch long or short as the temper of the people may permit, fatal or merely debilitating as the vitality of the people may determine, in which the nation turns upon itself in a kind of compulsive madness to deny all its tradition that is clean, to exalt all that is vile, and to destroy any heretical minority which asserts toad meat not to be the delicacy which government edict declares it. Triple heralds of the Time of the Toad are the loyalty oath, the compulsory revelation of faith, and the secret police. . . .

The general publication of this triad of polemical essays, all in the rational-visceral tradition of Milton, Zola, Tom Paine and Mark Twain, could not be more timely. For the return to power of Nixon and his reactionary cabal may well usher in another Time of the Toad, no

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less sinister for the fine patina added by Ivy League craftsmanship.

The "old" Nixon stance is supported by new muscle and has new determination. Abroad it means accelerated investment and reaping GNP superprofits, especially from those areas—Southeast Asia, Africa and Latin America—that have raw materials and cheap manpower to sell. Dictatorships can expect new shipments of military hardware to help control the restless poor. The manipulation of the fissures and difficulties within international socialism will carry on from the Presidential triumphs achieved in Peking and Moscow; our capitalist brethren can expect the bludgeon, as Japan has already learned.

The thrust of this foreign policy has not varied essentially since the time of FDR. It is openly predatory and has no justification but a shaky, unevenly distributed, socially pernicious domestic affluence. To maintain this burgeoning hegemony, with its "brushfire wars," "police actions," Bay of Pigs and Vietnam carnage, "order" is necessary at home. The password is control: wages (but not profits), maintenance of the structural *status quo*, and most important, suppression of unorthodox ideas and conduct—1984 is arriving ahead of schedule.

The earlier, cruder manifestation of this New Order is here analyzed by Dalton Trumbo, a distinguished novelist and screen writer, himself a victim of prison and blacklist. With no reflection upon the clean spading in this field of Frank Donner, Alvah Bessie, Eric Bentley and others, Trumbo's work is the best because he has had at the process of thought control from the soundest philosophical base and with the most polemical skill.

The three essays complement one another but differ in focus and style. The title piece, written in 1949, deals with the House Committee on Un-American Activities, and the Hollywood Ten pilloried by those shabby politicos. It makes a fine case for integrity against odds, and does not spare the center-stage villains, the rabbits in the Hollywood warren, or their counterparts in academe. (Trumbo's particular *bête noire* here, as in his *Additional Dialogue*, is Arthur Schlesinger, Jr.—that Hubert Humphrey of scholarship—whose sophistries he cuts into neat little cookies.) The extended pamphlet is eloquent and precise, with an anger never out of hand.

"The Devil in the Book," originally published in 1956, treats of the prosecution of Communist Party leadership under the Smith Act, designed to punish dissident ideas in anticipation of subversive behavior—legislation denounced by Justices Douglas and Black as in clear violation of the First Amendment. The essay is brilliantly constructed, examining the law, the defendants, the judge, the jury, the witnesses, and concluding with what the Supreme Court had to say, then and later. Its style is similar to the first pamphlet, if somewhat more measured.

(There is an ironic footnote to the Smith Act obscenity. It was first invoked against the militancy of a Minneapolis trade union. Despite a long and honorable record of defending civil liberties, the Communist Party turned its back on this issue, wrapping its doctrinal robes around its indifference. The negative opportunism of the Communist Party was manifest to all of the initiate: the Minneapolis leadership was Trotskyist, fiery leftist enemies of the One True Faith. Later, the kosher Marxists were given *their* lumps under the same law.)

"Honor Bright and All That Jazz," written in 1965 for *The Nation*'s 100th Anniversary Issue, surveys the whole period, and is stylistically different because of its seasoned blend of truth, passion, satire, wit—and, curiously in a polemic, lyricism.

The book is part of Harper & Row's Perennial Library. It should prove a hardy perennial itself. □

MUSIC

DAVID HAMILTON

Commenting on his first two string quartets, Elliott Carter referred to their "different versions of humanly experienced time." In further clarification, he quoted Thomas Mann (*The Magic Mountain*): "It would not be hard to imagine the existence of creatures, perhaps upon smaller planets than ours, practising a miniature time-economy. . . . And, contrariwise, one can conceive of a world so spacious that its time system too has a majestic stride." As Mann points out earlier in the same discussion ("By the Ocean of Time," in Chapter VII of the novel), music shares with narrative (and with life itself) the habitation of time as a medium, and thus stands in contrast to the plastic arts, "which are complete in the present, and unrelated to time save as all bodies are." (Mann is writing before the extra-narrative possibilities of cinema were appreciated; in the years since we have also seen examples of plastic, as well as merely visual, arts that occupy time, just as we have seen space become a resource in works built primarily of sounds.)

Of course, the counterpoint between the time span of a narrative's content and that of its telling has long been consciously employed by writers of imaginative literature. In music, a very rough analogy has been the relation of the actual sounds to a regular metrical pulse, either implied or actually stated. One can at least partly characterize the development of the art since the Baroque period (as Edward T. Cone has provocatively suggested in his valuable book *Musical Form and Musical Performance*) in terms of the evolution of this relationship, from uniformity to contrast, even to divergence and diversity. Out of this has come an enormous variety of

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In the light a fisher, harmless brightwinged ghost crying
one flat note of sorrow from its prison in the sun.
When the dark comes
my eyes darken for the new world & I set out on short strong wings
silent as the moon & stars riding with me in the sky
& far below I see you
where you call for my soft questions
& the deep quench of my claws.

William Pitt Root

potential time scales: Bruckner and Wagner are, so to speak, in different time-economies from Webern. Until the 20th century, all these conceptions of musical time dealt with a fairly regular background pulse, however freely the foreground of actual sounds might be treated, and in the years up to World War II there was a fertile development of the possibilities of wholesale irregularity—which still depended, however, on the implied presence of a background pulse to make its effect.

In the postwar years, the spectrum of possibilities in dealing with the passage of time has been greatly widened; we now have "time-economies" with floating currencies (music that states or implies a constantly changing pulse), multiple currencies (conflicting pulses), and even no currency at all (apparently random placement of sounds in time), all of them conceivably offering new expressive possibilities, new ways of experiencing time. Not all of these have been well or wisely used so far, but one particular group of scores offers compelling evidence for belief in their significance and further potential: the works of Elliott Carter. By developing techniques for the controlled presentation of shifting and conflicting meters, Carter has achieved a compositional resource that admirably serves his conception of the musical work as a vehicle for instrumental character, and over the last two decades, each new work from his pen has been a major event.

Carter's Third String Quartet, premièred by the Juilliard Quartet on January 23, upholds that tradition: a fresh and arresting conception of the internal dynamics of the medium, couched in a language and form that, although complex, are still convincing to the ear. The quartet is presented this time as two duos (I: violin and cello; II: violin and viola) that are—in one sense—each engaged in an independent activity for two, explicitly interreacting only toward the end of the piece. Each pair has its own material: four movements (*Furioso, Leggerissimo, Andante espressivo* and *Pizzicato giocoso*) for Duo I, six (*Maestoso, Grazioso, Pizzicato giusto meccanico, Scorrevole, Largo tranquillo* and *Appassionato*) for Duo II. The movements of each duo recur—although not in any literal fashion—so that by the end each one has overlapped with every movement in the other duo; further, each duo pauses now and then, permitting virtually every movement to be heard alone at some point. (When a recording comes along to permit repeated hearings, it will be fascinating to concentrate, for example, on Duo I, hearing its material filtered successively through the different facets of Duo II—and so on.) Finally, the combination has a shape over and above all this, with a "scherzo" character dominating soon after the beginning (particularly when the respective *Pizzicato* movements overlap), and then gradually yielding to a "slow-movement" effect, after which come the crux and interchange.

The effect, then, is somewhat like listening to two simultaneous conversations, with the important difference that everything—details, interactions and totality—has been imagined by a masterly ear, and a masterly dramatic mind. The scenario is a gripping one, and even if we may feel that the conversations are sometimes over our heads—as if carried on in a language that we know less well than our ancestral tongue—their import is intuitively clear enough. We can safely assume that further hearings will further stretch our ears, improve our "vocabulary" and enrich our experience. (It was more than intriguing to rehear Carter's First Quartet a few days later, superbly played by the Composers Quartet in their fine series at Carnegie Recital Hall; listening to the new piece had enlarged the bounds of one's experience, so that the simply technical features of the earlier work have now receded further and further into the background and the ear focuses ever more firmly on directly experiencing the counterpoint of time—analogous, in another dimension, to learning how to hear the several voices of a fugue at once.)

Much has been made in some quarters of the notational complexity of Carter's scores. To question musical validity on these grounds is, in effect, to elevate our defective and makeshift system for writing down the temporal aspect of music into a value criterion: i.e., "valid music can be written only with simple double and triple subdivisions of the beat, and metrical conformity of all the parts." The system was developed to write down music of that sort, and quite naturally its limits have been strained by all kinds of recent developments—but we listen with our ears, not our eyes. Some non-Western musics are full of conflicting rhythms, not commensurable in simple numerical terms, and millions of people who did not attend Juilliard grasp them without difficulty (indeed, a Western conservatory education may well make it harder to grasp such music). Notation is a necessary hurdle only to the composer, who must find a way to write down what he imagines, and to the players, who must

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re-create it in their minds and muscles. The latter task was accomplished by the Juilliard Quartet in truly heroic fashion —not only did they decipher masterfully but they overcame the challenges of ensemble performance (or—properly—anti-ensemble, since the nature of the piece demands quite the opposite of the simultaneous reactions they have so successfully cultivated for more than twenty-five years), and gave us a living experience, astonishingly vivid in its definition of character and individuality. If past experience with the rewards that Carter's music yields were not already proof enough, the willingness of these (and so many other) brilliant performing musicians to accept its challenges should be a persuasive argument in its behalf. □

THEATRE

HAROLD CLURMAN

There are several aspects of unusual interest in Phillip Dean's *Freeman* (American Place Theatre). It is about a black working-class family in a small industrial city in Michigan. The pressures of a Southern town or of life in Harlem are seemingly absent. There is little violence, drunkenness, vice. The drama is more "internal," or personal. Though specific in regard to the position of blacks in our country, the play's implication is wider.

Ned Aquila works at a menial and physically trying job in an automobile plant. His wife Teresa is a practical nurse in a local hospital. Their son, Freeman, is also employed in the auto plant. Ned, an "émigré" from the South, had hoped his son would do better for himself than he has, but Freeman dropped out of high school because he would not submit to what he felt to be his inferior status there. On the other hand, Rex Coleman, an orphan adopted by Ned and Teresa, has managed by arduous application to become a successful doctor. Rex, though now married and a leading physician in the hospital where Teresa works, is frequently at his foster parents' home and acts toward Freeman as big brother and friend.

There is something "strange" about Freeman; he wants to get ahead on his own terms. One day he enters a law court to try a case. When it is discovered that he is not a lawyer, he is hauled off for psychiatric examination and then sent about his business. But Freeman is convinced he knows more about the law—he has read lots of books—than any of the accredited attorneys.

Later he enters politics as a candidate for the board of city commissioners. His family—including his pregnant wife —and Rex try to dissuade him from this extravagance: he hasn't the needed qualifications. Freeman persists. He knows more about the town, he maintains, than anyone in the Business and Professional Men's Club (black) of which Rex is an important member. Freeman counts on Rex's help—Rex had once promised his support—but Rex now tells him that the club has voted to back another candidate. (We infer but are never altogether sure that the other man is Freeman's superior, or merely more "respectable.") Freeman does surprisingly well at the polls, but is not elected.

He insists that his defeat was effected through fraud, and demands a recount. Once again Rex warns him against taking this course. Ned sacrifices most of the family savings to help Freeman prove his point. Again Freeman fails. He is left without resources. Ned asks Freeman to take a job where he himself works and where Freeman had also worked for a while. He refuses. Then Rex pleads with him to accept a job at a community center as a "sanitation engineer" (janitor) and Freeman, broken in spirit, accepts. But once there, he sets fire to the place.

Rex arranges to have Freeman sent away for psychiatric care. As he leaves, mute and possibly mad, Ned asserts "*That boy ain't crazy!*" Then Ned himself rides off to God knows where, probably never to return. The quiet desperation of his life has become too much for him.

There is an ambiguity in the play which is part of its interest and value. Like Freeman's father, we understand and sympathize with the young man's trouble. Though he has by no means suffered the worst that a black youth may undergo among us, he has experienced the humiliation not so much of oppression but of the much less than mediocre state of his condition and environment. He exerts himself to break through, rise above or, at the very least, to place himself where he may effectively change it. His frustration gradually drives him to commit a gratuitous act of barely intelligible savagery. It is an example of the kind of crime one reads about so often nowadays, and of which both white and black are occasionally guilty.

The author does not sentimentalize the character. Freeman is contemptuous of Rex because of his compromises within the white community. Taunted, Rex defends himself, "Yes, I can bullshit, what can you do?" To which Freeman answers "Nothing." Freeman is not a rebel without a cause, but a rebel without skill. He has not learned how to cope with facts. His grievances are real, his exasperation justified, but we are obliged to view him not simply as a social victim but also as the slave of his conceit.

The play is not one of special pleading. Apart from the modest but sound portraiture of its individuals, it contains a cautionary element. To be a revolutionary leader one must know more, not less, than the adversary. Change is not brought about through righteous anger alone but through knowledge, hard work, self-discipline and cunning. Without these, explosive and exalted indignation misfires and ends in tragic waste.

The play takes too long to establish its credentials as scrupulous realism and is somewhat unclear in its factual exposition. But on the whole the author treads securely on the ground he has chosen. The area is truthfully seen without false poesy or adventitious symbolism. *Freeman* marks an advance on Dean's earlier play, *The Sty of the Blind Pig*, produced in 1971 by the Negro Ensemble.

Lloyd Richards has directed *Freeman* admirably in respect to casting and to the assistance he has given his actors. The entire company is to be commended. Bill Cobbs in the title role is an outstandingly convincing creation. The line of the character's development (or deterioration) from unruly arrogance to hopeless bafflement is traced with striking veracity. This is acting, not just histrionics. Marjorie Barnes as Freeman's wife, a girl from the Deep South who surprisingly has more gumption than those in the Michigan home, is as charming in her portrayal as she is candidly right. J. A. Preston in the dif-

A MOON THAT HALVED THE SKY AWHILE THIS MORNING

You find me in the sleigh
wrapped all in velvet:

going somewhere warm today
where heat makes snow a toy
and ground a playpen.

A short time I lie back
and let the winds roar
till the hills get rough
and I get anxious—

I stare out through the blades
at white around me.
Snow gives more than I can.

Rochelle Ratner

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ficult role of Rex—the character must be allowed credit though he is ostensibly "wrong"—plays with precision, vigor and measured heat.

During the past week I also saw *The Mirror* by I. B. Singer, being given at the Yale Theatre in New Haven. There is much that is engaging in the play, though it suffers in performance from insufficient rehearsal. The directors of the Yale organization, laudably ambitious in their choice of scripts, must not rush too readily where it is surely wiser to move warily: the better the material, the greater the requirement of care.

André Gregory's production of Beckett's *Endgame*, which I saw only an hour before writing these lines, is being done as a project emerging from the New York University School of the Arts (111 Second Avenue) and will play weekends there and alternate from March 29 with the same director's *Alice in Wonderland*. *The Mirror* and *Endgame* demand further discussion, to which I plan to devote myself next week. □

ART

LAWRENCE ALLOWAY

Sol LeWitt's first reputation was based on the modular sculpture he did in 1965 and thereafter. These open grids of identical parts are logically easy to grasp, but viewed in perspective take on a visual intricacy and flicker from the overlapping of the slender, white-painted wooden or metal bars. As early as 1967 he referred to his kind of work as Conceptual art, meaning "that all of the planning and decisions are made beforehand and the execution is a perfunctory affair. The idea becomes a machine that makes the art." As LeWitt pursued this practice, he made an unprecedented move away from three dimensions into two—unprecedented because sculptors usually protect their notion of volume or physicality with great intensity. The mystique of physical plasticity, for instance, is common to sculptors as different in other respects as Tony Smith, Mark di Suvero and Richard Serra. LeWitt is free of this craftsmanly burden and it is pleasant, like meeting an actor without vanity.

Late in 1968 LeWitt turned to drawing. In a publication known as "The Xerox Book," he took sixteen squares made up of lines running in different directions and worked out twenty-four permutations, changing the pattern of vertical, horizontal and diagonal lines each time. It is a two-dimensional version of the equalized parts of the modular sculpture. In addition, LeWitt made his first two wall drawings, one at a gallery in New York, the other in Los Angeles. The one in New York LeWitt drew himself: two 4-foot squares put directly on the plaster; in Los Angeles, two tiers of twenty-four 4-foot squares were done by assistants, following LeWitt's verbal instructions. Since then most of his work has been in the field of expanded or delegated graphics and two galleries are showing the work at present: at the John Weber Gallery there are big wall drawings (until February 14) and at the Rosa Esman Gallery, 24 East 80th Street, a selection of drawings, prints and wall drawings (until February 28). In effect the wall drawings range from schematic echoes of architectural form, as at Weber, to a kind of wall mist, as at Esman.

At first, I think, many people had difficulty identifying the regular hatched and cross-hatched shading on the wall, drawn with a hard pencil, as works of art. To quote the artist: "The drawing is done rather lightly, using hard graphite so that lines become, as much as possible, a part of the wall surface, visually." The situation was similar to early exhibitions of the sculpture of Carl Andre: the walls were disconcertingly bare and when the metal plates on the floor were correctly identified, a problem arose about stepping on them or going around. Pale but systematic shading on the plaster wall lay at the threshold of legibility. However, "the conventions of art are altered by works of art," as LeWitt has observed, and now that we know the wall drawings exist they can be seen and estimated.

In art, the pencil is usually identified with preliminary works, sketches for painting and sculpture, or with finished drawings on a fairly small scale. LeWitt has dilated pencil marks to room scale. I presume an influence here of Agnes Martin, whose paintings are often a mixture of paint layers and pencil tracks,

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the pencil being used to create grids of absolute regularity, except for the tremble of variation that comes from drawing on canvas rather than paper. The sense of a thin, sensitized skin is similar in both artists. Martin, incidentally, is having a large show of her work at the Institute of Contemporary Art, the University of Pennsylvania, Philadelphia (until March 1). She is unique so far as I know for her use of direct pencil marks within full-bodied painting. The combination of the grid image and the promotion of the pencil to major usage suggest some link between Martin and LeWitt, though there is a fundamental difference in that she works on a delimited ground, that of the canvas, and LeWitt on variable fields without regular boundaries.

The wall drawings can be modular or free, but in either case the artist requires a consistent density of the elements, so that the surface of the wall is not dissolved by tonal gradients. The instructions for the wall drawings which LeWitt or other draftsmen follow read like this: "draw 10,000 straight lines three inches long"; or, "vertical lines, not straight, not touching." The simplicity of the program is essential to his intention, because "different draughtsmen produce lines darker or lighter and closer or farther apart. As long as they are consistent there is no preference." The procedure recalls old schoolbooks (I quote from *The Rational Elementary Arithmetic*, 1899): "Draw: A line one inch long. A line twice as long as the first line. A line three times as long as the first line. A line twice as long as the second line. A square with each of its sides the length of the first line." And so on. Some of the wall drawings progress as methodically as that; others, such as the group at the Guggenheim Museum in 1971, are more akin to the improvisation of all-over marks in a Jackson Pollock drip painting. Ironically, this correspondence cuts across the autographic uniqueness that was certainly a part of Pollock's original intention by verbalizing in advance the exact number of lines to be used. However, what Pollock accomplished within the drip paintings, the interplay of similar variables, is achieved by LeWitt on the unbounded image fields of walls.

LeWitt emerged as a sculptor at a time when the objectness of sculpture was under much discussion. Donald Judd, the sculptor, wrote art criticism in the early 1960s which emphasized this theme dogmatically, as did an exhibition, "The Art of the Real," at the Museum of Modern Art in 1968, in which what was real was the work of art as the sum of its material characteristics. LeWitt's wall drawings, however, subtly corrode the brute concreteness of Primary Structures and Minimal Art theory, not only in their low profile as objects and their ambiguous dilation but in another way. The drawings don't have to be done by LeWitt himself, since the idea is the "machine that makes the art." Thus, provided his ideas are capable of being transmitted and obeyed, he can dominate work done in his absence. In his hands, Conceptual art is executive control.

A characteristic of American postwar art, which has received less attention than it should, is its ostentatious physical presence. The elaboration of facture by the Abstract Expressionists, the stepping up of color by the next generation of Abstract painters, the stress on sculpture's objectness, show three generations of artists all accepting the mutually supportive goals of concreteness and handsomeness. One reason for the primacy of American art at present is quite simply its irresistible, competitive aura. LeWitt is one of the artists (Andre is another) who have withdrawn from this escalation of the object. Whether in his wall drawings or in his drawings on paper, LeWitt confirms the pleasures of the diagrammatic. A diagram is reserved in its physical presence, but it contains a maximum of information. LeWitt subverts the inertial notion of genius by the pertinent fact of consistency. A good example of his factual elaborations is his book *Arcs, Circles and Grids* (Kunsthalle Bern and Paul Bianchini; available from the Weber Gallery), in which these three forms occur in 195 hypnotic combinatory spectacles. □

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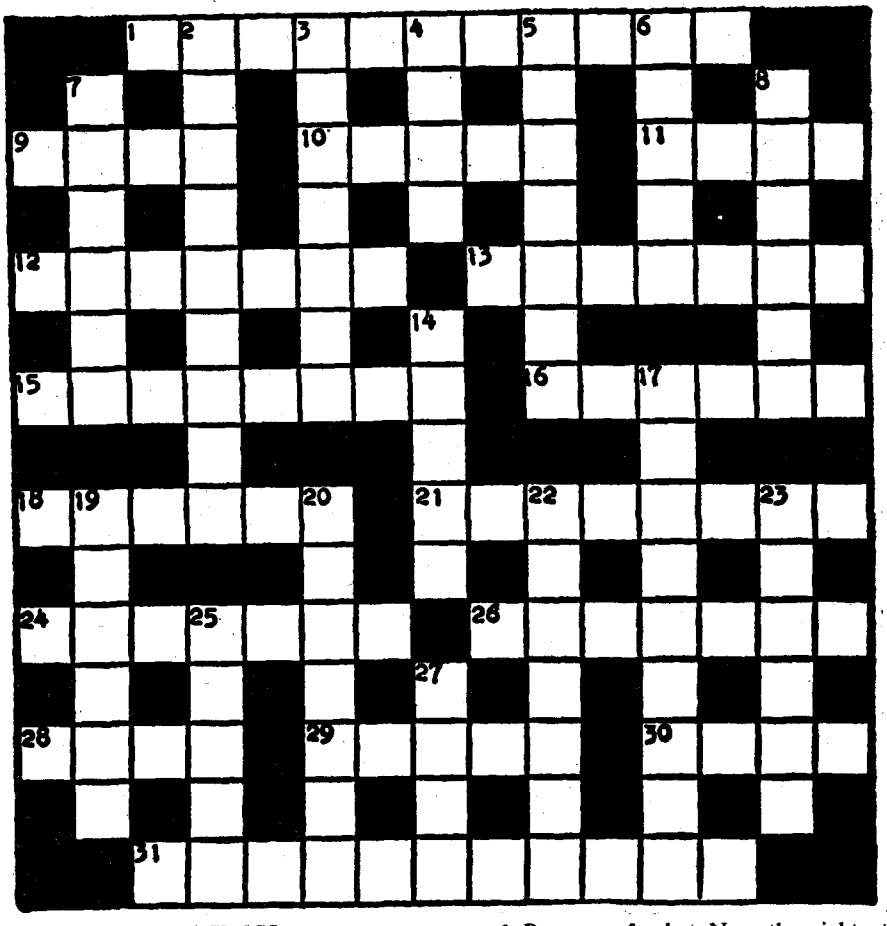

ACROSS

1 Where one might find a drink left, though scarcely a legitimate sign of it. (3,8)
9 and 10 Perhaps boasts about traveling from places far removed from JFK. (9)
11 It takes a basic measurement of the type that might appear in print. (4)
12 See 13 across
13, 12, 17 down and 29 across Typically extremes of wealth set a precedent for one requesting as well as one taking it. (At least it starts to provide a professional choice.) (4,3,4,3,6,3,5)
15 Passenger ships should, and get adorned. (8)
16 What a fisherman hopes to get shot in the river. (6)
18 As a bet, it could reproduce the sound of lessons. (6)
21 The unexpected ending inside it should describe 12. (8)
24 While an unexpected ending only makes this better. (7)
26 Runs into difficulty, quite appropriately at the edge of the water. (7)
28 Aims for the last places? (4)
29 See 13 across
30 Proving small change for 11. (4)
31 Sounds like what a barge mule does, and sticks to business. (4,3,4)

DOWN

2 Such things might take in liquid, but not here around the sun, for example. (9)
3 Reverse of what Namath might strategically do. (3-4)
4 Better hit on the head than hit on the finger. (4)
5 Sitting sounds up about one point. (7)
6 A girl brings up what might come in with the last of the dish. (5)
7 Momentarily drop a word of encouragement—your set might pick up something because of attachment to it. (6)
8 See 19 down
14 Notice what goes with Women's sometimes? It's rather free-wheeling. (2,3)
17 See 13 across
19 and 8 down An ambassador could scarcely go so far in such dear, dead days. (6,6)
20 They're rather lively, considering the priest's make-up. (7)
22 Was young Frederic such a slave? (7)
23 Though permissible on the stage, it's untidy—very untidy! (6)
25 Poet who had a 5, bringing it up thus. (5)
27 The father of this, thought according to reference. (4)

SOLUTION TO PUZZLE NO. 1476

ACROSS: 9 Stamping; 10 Letter; 12 Reverse; 14 Snaked; 15 Reenters; 17 Accredit; 20 Insist; 22 and 13 Protectorate; 24 Remarry; 26 Mayhem; 27 Original; 28 Hellenistic. DOWN: 2 Homemaker; 3 Tripled; 4 Mugs; 5 Believe; 7 Stalin; 8 and 1 Yes Sir! That's My Baby; 16 Toscanini 18 Carpal; 19 Decimal; 20 Irenics; 23 Tahoe; 25, 6, 11 and 21 Down by the Old Mill-stream.

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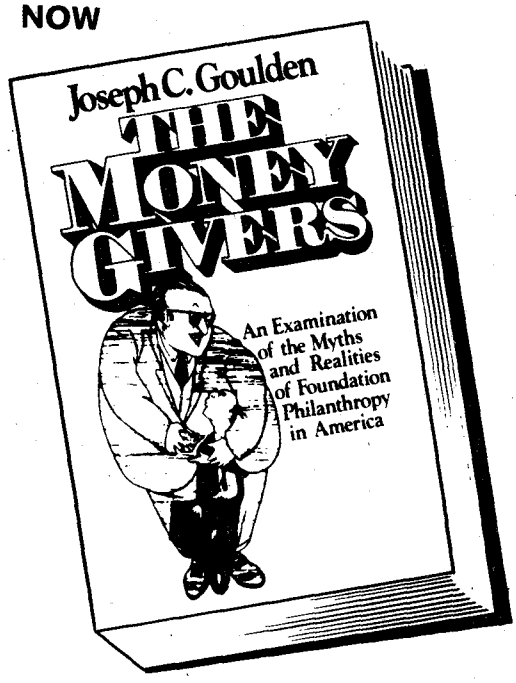

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